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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO

TUESDAY, FEBRUARY 21, 1984

Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Substitutions:

Hodgson, W. (York North PC) fro Mr. Gillies
Pollock, J. (Hastings-Peterborough PC) for Mr. Kolyn
Reid, T. P. (Rainy River L-Lab.) for Mr. Kerrio
Villeneuve, N. (Stormont-Dundas-Glengarry PC) for Mr. Mitchell

Also taking part:

Elgie, Hon. R. G., Minister of Consumer and Commercial Relations
(York East PC)

Clerk: Arnott, D.

From the Ministry of Consumer and Commercial Relations:

Crosbie, D. A., Deputy Minister
Thompson, M. A., Superintendent of Insurance and Registrar of
Loan and Trust Corporations, Financial Institutions Division

Witnesses:

From the Ontario Loan and Trust Companies Association:

Cunningham, D., President; with Termguard Savings and Loan Co.
Matthew, J., Secretary; with Confederation Trust Co.
Phinn, J., Vice-President; with Counsel Trust Co.

From the Appraisal Institute of Canada, Ontario Association:

Brock, M., President
Burton, P., Executive Director
Mason, R., Member; Member, National Professional Practice Committee
North, L., Member; Past President, Appraisal Institute of Canada;
Member, Accounting Research Advisory Board, Canadian
Institute of Chartered Accountants; Canadian Representative,
International Assets Valuation Standards Committee
Onyschuk, R. S., Counsel



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, February 21, 1984

The committee resumed at 2:15 p.m. in committee room 1.

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO
(continued)

The Acting Chairman (Mr. MacQuarrie): Ladies and gentlemen, I recognize a quorum.

The first party appearing this afternoon is the Ontario Loan and Trust Companies Association. Mr. Cunningham is its president. Mr. Cunningham, will you be kind enough to introduce the gentlemen with you and tell us their positions with your organization?

Mr. Cunningham: The representatives here with me today are Mr. Jack Phinn, of Counsel Trust, who is vice-president of the association, and Mr. Jim Matthew, who is a consultant with Confederation Trust and secretary of the organization.

The Acting Chairman: Proceed, please.

ONTARIO LOAN AND TRUST COMPANIES ASSOCIATION

Mr. Cunningham: I would like to express our appreciation for being invited here today. I will be reading from our written text and I hope there are some questions afterwards.

The Ontario Loan and Trust Companies Association appreciates the ministry's wisdom in seeking the views of the industry in its task and wishes to express its thanks to the ministry for being given the opportunity to present the views of its members on the November 1983 proposals for revision of the loan and trust corporation legislation and administration in Ontario.

The association represents Ontario-incorporated small loan and trust companies. For the purposes of this brief these companies are referred to as junior companies. For your edification there is a list of the member companies at the back of the brief.

The objective of the brief is to assist the Ministry of Consumer and Commercial Relations in formulating revisions to the loan and trust corporation legislation and administration in Ontario. Pursuant thereto, the brief makes certain recommendations from the perspective of the junior companies.

The association recognizes that changes to the legislation and in the administration procedures are needed. However, the resolution of the problems must take into account the particular needs and capabilities of the junior companies.

The industry has long played an important role in the Canadian financial system, particularly in the financing of residential construction and in providing fiduciary services to the public. At present, a few major companies account for the bulk of the industry's business. In order to compete successfully, the junior companies have had to sharpen the competitive aspects of the services they provide and closely monitor the type of business interests they serve.

They have had to develop flexible administration structures to enable them promptly and efficiently to analyse and finance the smaller types of projects and transactions. These are frequently perceived by the major trust companies as being too management-intensive. On the other hand, junior companies have the competitive advantage of lower overhead and administrative cost.

The combined effect of these factors is that the junior companies can compete effectively in interest rates on deposits; service varied geographic locations; offer a wide variety of services and product and innovate new services; and offer more competitive services and investment opportunities at generally higher rates.

It is essential in the public interest that the junior companies continue to be able to operate within a legislative and administrative structure that recognizes the importance of the role of these junior companies. Healthy competition within an appropriate regulatory regime operates to the benefit of the public. If the competitive edge of the junior company sector of the industry is diminished, the increased concentration in the major companies will operate against the public interest in the long run.

The association was formed in 1978. The founding members recognized there was a need for improved liaison and co-operation within the junior company sector of the industry and between the association's members and the majors. The main concerns were to improve educational and training programs within the industry, to liaise on legislative changes and administrative procedures, and to encourage informed dialogue between the industry associations and government agencies.

The association recognizes that the first responsibility of its members and of government regulators must be to protect the interest of the public depositors. Clearly this is a responsibility shared by the government and the industry. The association believes that pursuit of its objectives will contribute to encouraging public confidence in the industry and thereby ensure that the industry as a whole will prosper and the junior companies will thrive as a dynamic sector of the industry.

Within the priorities of protection of the public depositors and the development of a financially strong industry, the association respectfully submits the following recommendations.

Improvements should be made to the administration of the borrowing capacity provisions contained in section 109 of the act.

There should be a relaxation of the rule requiring that 75 per cent of assets be invested in residential mortgages.

Improvements are required in liaison between the ministry and the companies in the industry and in the ministry's administrative procedures.

The proposed capitalization of full-service trust companies at a minimum of \$10 million should be rejected.

The administration of section 109 is of great importance to the junior companies. It is, however, one of the areas of administration which is remarkable for its lack of certainty.

The section prescribes the authorized borrowing multiple up to 20 times the borrowing base calculation, subject to change by order in council. The level of the multiple allowed has a major effect on profitability. A company operating at a multiple of 20 times can be profitable, other things being equal, on a lower spread between interest rates paid on deposits and interest rates received on the loans, than a company operating at a level of 12.5 times. The competitive disadvantage of the lower multiple is obvious. The white paper proposes to increase the maximum multiple to 25.

The foregoing competitive disadvantage has been exacerbated by increased competition from the chartered banks and the loan and trust companies' main line of business, the residential mortgage lending market. The Canadian chartered banks, and more recently the schedule B banks, all of which operate at higher borrowing multiples, have become aggressive competitors in this market. In the face of this competition, overly restrictive limits on the borrowing multiple have become an extremely important constraint for the junior companies which operate at the lower multiple.

The section is lacking in a number of respects. However, the main criticism is in the absence of prompt, clear procedures and the administration of the section. These deficiencies and the association's recommendations are as follows.

There is no set of standards and no objective test which an applicant company must meet in order to qualify for an increase in its multiple. It is submitted that guidelines be established, setting out the financial parameters which would generally apply on an increased multiple application.

The overall discretion of the registrar in these applications must be retained. However, it is submitted that the general tests of demonstrated capability and resources are capable of more specific definition.

There is no established time frame for processing an application. At present there appears to be a bottleneck in the application process since a number of applications made over the last 15 months have not yet been acted upon. It is essential that applicants have their submissions responded to in a timely manner.

At present there is no requirement that the unsuccessful

applicant be given reasons for the refusal of the application. If there is to be any degree of consistency in the administration of the section and in the efficacy of the appeal process put forward in the ministry's proposals, it is essential that the registrar give cogent reasons for any refusal. This is possible only where there are predetermined guidelines.

Applicants who have not yet reached their current maximum borrowing multiple are frequently not allowed to apply but are asked to wait until the limit is reached. This makes it impossible for the applicant to make forward commitments and effectively freezes the applicant's activities while the application is being finally considered.

Applications from companies not yet at their borrowing limit should be permitted where the applicant can demonstrate just reason for an early application. As stated above, the time frame for the processing of the application should be defined within reasonable limits. Refusal of an application should be subject to appeal to the commissioner.

The association submits that these changes would greatly improve the ability of the small companies to compete more effectively and would in no way be contrary to the public interest. The association would welcome the opportunity to assist any committee which may be established to implement the foregoing administrative improvements.

The rule requiring 75 per cent of assets to be invested in residential mortgages once made sense but it is now a historical anachronism. Formerly a great volume of residential mortgage product was available and competition to service this market was less intense. In recent years, the chartered banks have entered the residential mortgage market and have become a prime force in the area due to their lower cost of funds. In consequence, it has become increasingly difficult for loan and trust companies to find sufficient good quality residential mortgages to meet the 75 per cent rule.

The result is that an inordinate amount of time is devoted to locating residential mortgages. Frequently this results in acceptance of residential mortgages that are far less secure than equivalent commercial transactions. We submit that in the current economic climate the problem will probably worsen rather than improve. In this context, the 75 per cent rule can operate contrary to the interests of the public.

The association strongly recommends that the 75 per cent residential mortgage rule, having long outlived its usefulness, be reduced to a level of 50 per cent of assets or lower. Commensurate with the reduction of the residential mortgage minimum, the present lending limits on nonmortgage business such as consumer loans, commercial lending and leasing should also be relaxed, as provided in the ministry's proposals.

2:30 p.m.

Many of the association's members have experienced

frustration in establishing and maintaining continuity of liaison with the ministry. Frequently it is not obvious to the member firm whom in the ministry it should contact on a given problem. The usual changes of personnel within the ministry exacerbate the problem.

As a result, the level of contact between the individual companies and the ministry is not what it should be. Confusion often develops and the companies develop unduly negative perceptions of the ministry and its role. From the ministry's point of view, the development of the early warning system is not enhanced by this lack of contact.

The association recommends that this problem can be addressed by assigning a team of two contact persons in the ministry for each company. This should be of mutual benefit to the company and the ministry, since the individuals would develop a greater knowledge of the company's needs and business affairs over time.

The association strongly recommends that the advisory committee contain the broadest possible representation in the industry, including representation by professionals who are engaged in the junior sector of the industry. We submit that the specific needs of the junior companies should be represented at the advisory committee level.

The association supports the newly implemented financial reporting procedure which is referred to in the ministry's proposals. It is recommended that particular attention be given to the elimination of duplicate reports such as quarterly liquidity and semi-annual returns with a view to streamlining the overall reporting procedures.

The ministry has proposed that the minimum capital for a trust company offering a full range of services should be increased to \$10 million, with authority to the registrar to recommend smaller minimum capital in special circumstances. The association submits this proposal should be rejected. The junior companies provide a wide range of diverse services. Some of the smaller companies have developed specialty services not supplied by the others. They should be able to continue to expand and develop their services, based upon the criteria of ability to develop and deliver these services, not upon minimum capital.

The difficulty in defining which services may be conducted by a company holding less than the proposed minimum capital is not capable of fair and reasonable resolution. The proposal for a \$10-million minimum puts the junior company at a distinct disadvantage.

Notwithstanding the current minimum capital requirements, most of the association's members are well in excess of this figure. The association recognizes it is desirable to increase the minimum capital and submits that an increase to approximately \$5 million is reasonable. The disparate abilities of the major and junior companies to obtain access to equity funding must be recognized.

The association hopes the foregoing will be of assistance to the ministry in its current deliberations.

That is the end of our written text. I can only add one major point. We did not have access to a copy of the brief submitted by the Trust Companies Association of Canada. We have since received one, and we wholeheartedly support the views it represented. They have a greater level of personnel than we do who can delve into this type of thing. By and large, they have presented the views we support and they represent our opinions on the changes that should be made in the industry.

Hon. Mr. Elgie: There are some comments I would like to make. On looking through the list of companies, I note the head offices are in Toronto, Hamilton and St. Catharines. One of your comments related to the wide geographic service provided. Could you give me some examples of companies that do provide service in what sort of small communities throughout the geography of this province?

Mr. Cunningham: As one example, the Home Savings and Loan Corp. operates in the St. Catharines area.

Hon. Mr. Elgie: St. Catharines, Hamilton and Toronto. I have noted that.

Mr. Cunningham: The bulk of their operation is in St. Catharines, which is not well represented by other trust companies at this time.

Hon. Mr. Elgie: Other people presenting briefs have commented on the need for small companies and the important geographic role they play in parts of the province that may not have those services. What I am trying to get at is can you give me some idea of the regional services--

(1435 follows)

commented on the need for small companies and the important regional geographic role they play in parts of the province that may not have those services. What I am trying to get at it is, can you give me some idea of the regional services, the regions of the province small trust companies are serving that other larger ones are not?

Interjection: The branch offices.

Hon. Mr. Elgie: The branch offices; that is what I am asking for.

Mr. Cunningham: The bulk of the members of our organization are in Toronto, Hamilton and environs. Income Trust Co. services the Niagara peninsula with a number of offices in smaller towns in vicinities which do not have representation by larger trust companies. They have banks but not trust companies per se, other than perhaps Victoria and Grey Trust Co., which is well represented in that area.

On top of the regional aspects, we can look as well to some of the ethnic aspects of what our group represents in membership. For example, Cabot Trust Co. is well represented in the Italian community, as you are aware. Community Trust Co. Ltd. is well represented in the Ukrainian community in Toronto. From the regional aspect, those are the major examples I can think of from our aspect.

Hon. Mr. Elgie: I know about Community's estates, trusts and agencies role, but what other companies of the small ones would be involved in a full estates, trusts and agencies business?

Mr. Cunningham: Unfortunately, I could not give you specific answers as to which of our members have a full ETA business.

Hon. Mr. Elgie: Give us an idea of the number of those members that might be involved. Are we talking about one, two or none? I know Community is one.

Mr. Cunningham: Community is one.

Hon. Mr. Elgie: We understand the specific circumstances about Community.

Mr. Cunningham: Perhaps Mr. Phinn can answer on behalf of Counsel Trust Co.

Mr. Phinn: We do not provide ETA services.

Hon. Mr. Elgie: It is not usual then. It is uncommon for a small company.

Mr. Phinn: That is probably a fair statement.

Mr. Cunningham: I could not specifically answer as to which members do.

Hon. Mr. Elgie: Those are the only questions I have.

Mr. Renwick: Since the intricacies of section 109 are not well known to the members of the committee, I would appreciate it if the minister or his advisers would go through each of the itemized points that are raised on page 4, page 5 and ending at the top of page 6, with whatever comment the ministry advisers feel appropriate.

Hon. Mr. Elgie: Mr. Crosbie, would you and Mr. Thompson care to comment on each of recommendations 1 through 4, primarily on the first one, the increase in the borrowing multiple.

Mr. Thompson: Section 109 really sets the limits of the amount that can be borrowed from the public in relation to the borrowing base or capitalization of the corporation. As we have heard and as it is set out in the case of a trust company, the statutory minimum is 12.5 times. In the case of a loan corporation, the current limit is four times.

It is customary to weigh each request for an increase in capitalization in jumps of two and a half times, and to weigh that in connection with a combined effort of increasing public borrowings as well as increasing capitalization. The capital of the corporation is the bottom line. It is the safety valve, if I can use that term, as to the ability of the company to meet its obligations to the public.

I hope that is a general overview of the purpose of it. If I can deal with some of the items here. I believe you said--

Mr. Renwick: The specific items starting at item 1 at the bottom of page 4.

2:40 p.m.

Mr. Thompson: There is no published set of standards because it is a discretionary matter. It requires a recommendation to the Lieutenant Governor in Council for an increase on that. In order for that recommendation to be made, it must be established first that there are no known or discernable violations of the Loan and Trust Corporations Act. In other words, the company has to demonstrate its ability to abide by the law relating to loan and trust corporations.

It is part of our white paper proposal that a set of standards be published on that, but in order to feed our own evaluation under item 1 that there is no violation, we do require a full examination of the company to ensure that state of affairs exists before any recommendation goes forth.

In the case of the junior companies, we would like to see a contribution to the capital account of the company in furtherance of that. One of the difficult problems we have faced over the years is the ability of the shareholders to increase this multiple in conjunction with capitalization. Obviously, a company that is in operation must, in order even to continue to take deposits, have an increase in the multiple or an increase in capitalization.

In the case of some companies, it is necessary to go outside the shareholders' group to increase that and obtain capital funds from other resources. We want to plan with respect to that because we have had instances over the years where the junior company reaches a level at which it cannot acquire any additional capital. This is a very difficult situation for somebody who may have spent 20 years developing a corporation.

Basically, that is an overview of the approach we take to a request for an increase in the borrowing multiple.

Mr. Renwick: On item 2, the question of delay, is there a bottleneck? Are there a lot of applications that have not yet been acted on?

Mr. Thompson: I do not think there is a bottleneck. We do have to stage this request with the examination. We have to examine all the companies during one year, so frequently I say no.

I am sure on the other side of the coin somebody is saying, "I have had to wait six months for your people to come in." That is a delay, and that is the basic reason for it.

Mr. Renwick: How many applications do you have pending now?

Mr. Thompson: We have them continually. I would say around 10.

Mr. Renwick: About 10.

Mr. Thompson: Yes.

Mr. Renwick: There may be a delay of anywhere up to 16 months?

Mr. Thompson: No, I would not say 16 months.

Mr. Renwick: Or 15 months?

Mr. Thompson: No, a year.

Mr. Renwick: Within a year.

Mr. Thompson: Yes.

Mr. Renwick: What about item 3, reasons for refusal?

Mr. Thompson: I do not know of any instance where we have said we will not process it. If somebody wants to bring that to my attention, I will certainly check it out.

Mr. Renwick: If you refuse, do you give reasons for the refusal?

Mr. Thompson: Yes, we do if there is a refusal to recommend.

Mr. Renwick: Then you would give reasons.

Mr. Thompson: Yes.

Mr. Renwick: Then item 4 says, "Applicants who have not yet reached their current maximum borrowing multiple are frequently not allowed to apply, but rather are asked to wait until the limit is reached." That seems to speak to an undue inflexibility on the question. Is that an accurate statement?

Mr. Thompson: In our analysis of it, as a result of the examination, we endeavour to tell the company, on the basis of the amount of money they are bringing in, when we think that multiple will be reached, and we do ask them for their own plans with respect to it.

They can reduce borrowings, and we always try to do this within a year's time, because I do not think it is very healthy to

have them running up too high to the level during that year unless there is a plan to introduce capital, to reduce borrowings or to process an increase in the borrowing multiple.

Mr. Renwick: May I ask you a couple of questions? Are any of the companies listed in your association engaged in the estate, trust and agency business?

Mr. Cunningham: To go back to that question again, a number of companies are, but by and large the majority of our members are not. That is part and parcel of the nature of the estate, trust and agency business. It is a capital-intensive business that is very long term. The bulk of our members, being the junior companies, are not of a size to diversify into that area and go into it with the type of commitment both financially and on a personnel basis, quite frankly, that is necessary to make an effective go of it.

I think the feeling generally among the junior companies is that until they reach a sufficient size to handle that type of business, it is not an area of endeavour they would enter into. With some exceptions--such as Community Trust, which has a strong ethnic orientation whereby it provides specific services for specific reasons--we have always viewed it as the type of business that, if we cannot go into it on a fairly large and full-service scale, we are better not to be involved in it at all because we cannot handle it effectively.

Mr. Renwick: How many of the member companies have branch offices?

Mr. Breithaupt: Perhaps the ministry could provide us with a list of the branch offices of the companies; then we would have an accurate statement instead of relying on memory.

Mr. Crosbie: We will do that. We will have a look at our records and provide the committee with that information.

Hon. Mr. Elgie: I have raised that question simply because there were representations by people like Mr. King that the role of the small trust company was to serve the small geographical regions of the province. Do you remember? I am just trying to get an idea from their perspective whether they saw that as one of their major roles and major raisons d'être, because I have never sensed that they have.

Mr. Breithaupt: No. There may be some that are not in this association as well that have branch offices. We could find out on one list perhaps.

Mr. Cunningham: Certainly, there are a number of companies that are not members of our association that qualify under the small company category.

2:50 p.m.

In answer to your previous question, I think we have well over 50 per cent with branch operations. Again, it is a business decision, and I hope the committee appreciates that as representatives of the smaller or junior trust companies we have a wide divergence in the type of operations we have and the levels of expertise in different areas. A number of companies are specialists in some fields although not generally in other areas. We have very diverse ideas of what business we should enter into and what business is profitable to each of our individual members.

To some extent, that is our problem in coming up with an overall stance on what we feel is important in changes to the legislation. We totally support changes, but because we have a broad and diverse membership with very different ideals, in some respects it is difficult for us to put together an overall opinion about where we stand.

For example, our feeling is that as we become larger, increase in size and add services, such as estates, trusts and agencies, which we feel come later in a trust company's development, we become more homogeneous with the larger institutions that are available today. But in our earlier stages we are very diverse and very different in the types of markets we attract and go after.

Mr. Renwick: Your association combines both companies that are loan corporations and companies that are trust corporations. That fact leads me to believe the distinction in the financial intermediary business is not of any great importance to the members, the distinction between a trust company and a loan corporation, whereas the legal conception behind the nature of deposits in trust companies is substantially different.

Mr. Cunningham: We do not have a particular differentiation among ourselves in the nature of the business we are doing, especially as junior companies. As time goes on, the desire is to expand and diversify, in which case the trust aspect is important. Speaking, as I am, as an officer of a savings and loan company, at our current stage of development there is not a great deal of difference in our operations either as viewed by the public or as viewed internally in our capabilities. Because of the size of the companies, we are capable of the same type of operations, by and large. Over time that changes. Again speaking personally, from the savings and loan aspect, we would like at some point to change and have those capabilities when we feel we are of a size effectively to utilize them.

Part of the reason we have a smaller association is not only that we are junior companies and represent that particular interest, but also as savings and loan companies some of our members are not allowed to be members of the Trust Companies Association of Canada. I find that unfortunate, but it is something we have not been able to overcome. Again, it is a factor in why we have our association.

Mr. Renwick: My concern is whether we are perpetuating a mythology in the statute when we say in subsection 115(2) that "every trust company receiving deposits" and so on "shall be deemed to hold the deposits as trustee for the depositors and to guarantee repayment thereof, and there shall be earmarked," etc.

Section 116 says, "...shall not be deemed to be money borrowed ...but to be money received in trust," which is quite distinct from the more usual accounting concepts related to loan corporations. The trust aspect of it appears to have disappeared into the Canada Deposit Insurance Corp.

When people ask about investing in a company and how much they should invest, I think everybody now says, "Up to so much you are guaranteed by the government." It may be beyond the purview of this committee to institute it now, but should we be telling them to forget the nonsense about the trust aspect of it? It is not really a trust business any longer. Should we tell them to just treat it with the ordinary elementary accounting principles they understand?

Mr. Cunningham: With all respect, I think I can only answer that question as an officer of a savings and loan company. We do not view our deposits as any different in category or in treatment than if they were guaranteed investment certificates and handled in the same fashion as a trust company.

I think the overall consensus of the industry is that there is the trust obligation--there is the responsibility for those deposits--and the designation becomes one for accounting purposes and as part of a legal description. We do not differentiate between what we are doing and the deposits we are taking in than if we were a trust company. We feel we treat them in the same fashion, with the same level of responsibility and trust duties.

To briefly answer your question, we do not see there is a difference. Perhaps the public would be better served by removing the difference in the definition between the two companies.

Mr. Crosbie: I think the last question touched on what I was going to ask about, but I just wanted to get some comment on the recommendation in the white paper.

The proposal is that the borrowing multiple for loan and trust corporations be the same, at 10 times. It was suggested in various other discussions of the committee that corporations not providing estates, trusts and agency services should not be allowed to call themselves trust companies. They could perhaps facilitate some of the normal trust company things like registered retirement savings plans, but unless they are providing a reasonable range of trust services they should not be allowed to carry the title "trust company."

Apart from the obvious inconvenience of changing the name, I wonder if your association has any views on a prohibition against the use of the terminology "trust" in respect of a company which is not providing ETA services.

Mr. Phinn: I personally think that again this would lean towards the big trust companies. For instance, 75 years ago Royal Trust was in the same boat we are; they could not afford these sorts of services. They took on that gentleman there at 18 years of age and they did certain things for him. When he got to be 85 and was ready to--

Hon. Mr. Elgie: He is a long way from that, I will tell you.

Mr. Phinn: I am not suggesting you are 85. When he is going to depart this world then that becomes profitable for them, but that is a long-term thing. Right now, in my opinion, the small trust companies cannot afford to take these sort of things--

Mr. Crosbie: I realize that. I am just thinking of your analogy. Royal Trust was probably only providing ETA services 75 years ago and was not allowed to go into the type of intermediary services that are currently the basis of many of the small trust companies.

3 p.m.

If you are saying your profit line is loans, why is it not reasonable to limit your title to a loan corporation until such time as you have reached the capital capacity and level of skills and trained staff to allow you to undertake trust services? I think one of your co-speakers has indicated he sees no difference in the treatment of customers between his loan corporation and that of a trust company. Presumably the term guard can grow to a level where they have the capital and the human resources to administer trusts and they could then make the switch.

My suggestion is that until the company gets that skill and capital base, it should not be allowed to hold itself out as being a trust company when, in fact, it is not.

Mr. Cunningham: In answer to that, I would like to ask two questions. You broad-brushed it as ETA business. Are you including estates, trusts and agencies in that definition of trust capabilities? Certainly, even as a savings and loan company there are a number of agency functions which we perform and are authorized to perform by order in council. We do not do trustee work per se.

Mr. Crosbie: I did preface my remarks by saying that there were certain trust functions which are agency functions and which I realize nontrust companies are performing. For example, the administration of RRSPs has been technically a trustee relationship, but those could be accommodated by some special powers of a loan corporation.

The basic argument I am trying to address is a suggestion that there is an aspect of the designation of a trust company which has some special significance. If that service is not there, why should a corporation be allowed to hold itself out as being that type of corporation?

Mr. Cunningham: Quite frankly, I find that argument a little difficult to rationalize. It is the equivalent of saying, "You can hold a learner-driver permit for a car, but you should not necessarily ever be able to have the full authority to drive an automobile."

Mr. Crosbie: I would make your analogy, "I have no problem with having a driver's licence, but it does not give me a chauffeur's licence or permission to drive an 18-wheeler." You have to qualify yourself again at another level.

Mr. Cunningham: Okay. From our aspect, we feel that the estate work is probably the last hurdle we would attempt. It is something that would come with size, but in the trust and agency business, agency is probably first. This is an integral part of our business, but it is something that is implemented for practical purposes in stages and, as a sensible issue, we do not try to take on prematurely something that we cannot handle.

In that respect, I find it difficult to accept a restriction on all or part of that when, from our aspect, we view it as more of a staged developmental growth that we achieve. I would like to think we all have the ability at some point to reach that Royal Trust stature.

I also question how many of the large trust companies offer full estate services and how many are pleased with the operation they have. Again, because of the cost and labour-intensive nature of it, it is something that a number of institutions have cut back on over the years and let other people who are prepared to specialize and make a profit go into in more depth. That is like saying we should grant that to Royal Trust because it is going to go into it full fledged, but we should turn around and say to Canada Trust, "Since you are not doing it to the same extent, why do you not get out of it entirely?"

I do not feel that is a fair thing to do or something that we should embody in legislation. I guess what we are looking at here are legislative changes.

Mr. Crosbie: Yes.

Mr. Renwick: Could we have your assistance on one area of the problem that does not come through very clearly to me? I assume that when you speak of yourselves as junior companies it also means you are targets for takeover operations of one kind or another.

If there is a takeover operation, what is the legitimate area of response with respect to a proposal to take you over? What would the role of the government be in approving, or disapproving, or having an interest in or no interest in that kind of transaction, bearing in mind that the Crown Trust fiasco had its origin in a number of changes in, or fights about the control of that company from the time Mr. McDougald died until it ultimately disappeared as a trust company.

Mr. Cunningham: Might I ask a question for

clarification? Do you mean we are looking, by and large, to take over other companies, or get ourselves to a point where we are taken over?

Mr. Renwick: No, from the point of view that you would be the subject of--

Mr. Cunningham: I do not think the desire of any of our members is to achieve the size where we may be taken over.

Mr. Renwick: No, I meant the other side; that you would be the target of a takeover bid.

Mr. Cunningham: Exactly. I do not think the emphasis of any of our companies in our growth patterns is to achieve the size and stature that we would be attractive as a takeover vehicle. The objective of the ownership--

Mr. T. P. Reid: Keep your head down and no one will shoot at you.

Mr. Cunningham: To some extent. Certainly it is something that has happened in the past to a great extent and we feel to the detriment of the industry at one time. There is certainly a greater number of the junior companies around today than there were for a period of time.

I do not think any one of the investors or groups of investors controlling the companies in our association have a design to be taken over by a larger company. That may or may not happen, but it is certainly not something at which we are aiming our game plans or conducting our business with a view to achieving.

The Acting Chairman: I got a conflicting message here. First, I got the message that you want the borrowing multiplier increased so you can grow larger. I heard some mention when you were talking about wanting to grow and Royal Trust starting small and growing. Is your objective to stay at a certain level so you are not attractive from the point of view of being taken over, or is your objective to grow?

Mr. Cunningham: Our objective is definitely to grow, but not for the specific purpose of being taken over by a larger company.

The Acting Chairman: Yes. At the same time, a while ago you indicated you were not quite of the size that any other company would be interested in you. That, at least, was the message I got.

Mr. Cunningham: To some extent that is true, although in the past, historically, we can look at some of the companies both Canada Trust and Royal Trust have acquired. To all intents and purposes, in viewing them objectively, there is no attraction to them, other than reducing the competition.

The Acting Chairman: I am sorry if I interrupted--

Mr. Renwick: No. It is often not a question of whether you want to be or not.

Mr. Phinn: That is right.

Mr. Cunningham: It is something we cannot avoid when we get to a certain size and become visible. But in answer to the second part of your question, sir, the aspect of--what was the second part of your question?

Mr. Renwick: About the role of the government.

Mr. Cunningham: The role of the government, yes. We do not have any problem in accepting the fact that in a takeover, in any kind of an amalgamation, there has to be a qualification of the company which is taking over, the company which is acquiring the shares or the controlling interest in another company.

I do not see any problem with the proposals contained in the white paper or from our viewpoint, because we want to see a strong industry. We have no objections to anyone who is trying to acquire control for themselves or as part of a takeover or an amalgamation, meeting standards and tests in the same way as any new applicant for a charter. That is the type of thing which is necessary. It has to be in place and it should be embodied in the legislation we are going to be enacting.

3:10 p.m.

The Acting Chairman: Are there any other questions?

Mr. T. P. Reid: Just to follow up, what is the ownership structure of your companies?

Mr. Cunningham: It is very varied. I go back to my statement that it is difficult to put together this type of paper because of the diversity of interests. We run everything from the single ownership of about 50 per cent of our members to the broadly held ownership of the other half.

Community Trust, for example, is controlled by credit unions representing its shareholders. Cabot Trust has 23-odd individual shareholders. We personally have a single shareholder. So the range is as broad as the day is long. We represent everything from one to a fairly large number of shareholders.

Mr. T. P. Reid: Do you have any feelings about the ownership of the organizations? I suppose if you are a single owner--

Mr. Cunningham: I wish you had not asked me that.

Mr. T. P. Reid: It is a concern for some of us in the whole spectrum of what we are talking about. I do not want to get into Mr. Renwick's takeover business particularly, but obviously if you are a single owner, you can pretty well resist anything you want. In your day-to-day operations, your capitalization, and how

things are run, do you have any feelings about, shall we say, what might be the best scenario?

Mr. Cunningham: We support, by and large, the trust companies association's stance with respect to ownership. We feel that during the earlier years of the development of a savings and loan or trust company, a benefit can be derived from having a majority shareholder.

In view of the capital requirements proposed in the act, I would put the question back to you. Does it seem feasible for someone to put up \$10 million in capital as an individual to start a company, or does it seem feasible to develop a base of shareholders for a startup situation that would have a \$10-million capital base?

We feel quite strongly that in the early years of development, from a practical standpoint, it is almost impossible to attain that type of situation. Over time it develops of its own accord. A company starts out with a more limited ownership and, as it grows, it becomes more diversified. At some time the majority of our members will become more widely held. In the startup years, it is almost impossible, as we view it, and it is probably more beneficial that a single shareholder takes a strong hand in bringing that company to fruition.

Mr. T. P. Reid: In my naiveté as a country lad, I do not know too many people who are walking around with \$5 million in their pockets, let alone \$10 million, I think it would be easier to float public shares or get 10 or 12 shareholders to raise the capital than it would be for an individual to do it. There is a problem: how do you start one of these things if you do not have \$10 million in your pocket? That is the point you are making.

Mr. Cunningham: The other response that comes to mind is we do not expect to be profitable for the first two or three years at a minimum. In going to a broader shareholder base, it is very difficult to acquire the type of shareholders who can be patient enough to accept the fact they will not receive returns on their investment for a certain period of time. Add that to the volume of dollars required for diverse holdings of the shares of the company as a startup and you are faced with an almost impossible task.

For example, in this room I question whether we would have a totally unanimous opinion one way or the other on the legislation. To get 12 shareholders, as you suggested, with exactly identical opinions, goals and aspirations as to the growth of the company, the development of the company and the time frame and quantity of return they required is an almost impossible task.

Mr. T. P. Reid: It is almost like saying, "If you have to ask the price of the company, you cannot afford it."

I have just one further question. One of the things we are not allowed to talk about, but that have brought us all here together, is the conflict of interest, the supposed problem of people treating the assets of a company, however they get into the company, as their own to do with as they please.

Do you have any code of ethics or conflict guidelines for your companies? I do not know if they are your parent body or the other group--

Mr. Cunningham: As an association?

Mr. T. P. Reid: Yes.

Mr. Cunningham: No, we do not; we do not consider ourselves a self-regulating body in any respect. It would be difficult for us to be a self-regulating body. But more than that, we defer to the government to provide legislation under which we can work and which is reasonable to provide that regulation.

Far be it from us to say that the regulatory requirements are not necessary in some aspect. What we are looking for are changes to them and a restructuring of them to reflect the realities of the world and something that is workable for us as businessmen.

Mr. T. P. Reid: Having said that, I can anticipate your answer to this question. To take a hypothetical situation, do you not think there is less chance of somebody using the company for his own particular gain or means or goals if the membership is diffuse than if it is held by, let us say, a majority shareholder, apart from the problems of startup and that sort of thing?

Mr. Cunningham: To refer again to our trust companies association brief, their answer to that, I think, expresses our view in that we feel that a management team and an executive that is responsible and responsive to more closely held ownership is probably made to toe the line more than a management team that does not have the same type of power held over it by a wide variety of shareholders. Since we are answerable to a limited number of individuals, they can be very definitive in what they want us to do and the way they want us to perform.

Mr. T. P. Reid: The problem is the other side of the coin, which is that they are not responsible to anybody other than, presumably, the registrar.

Mr. Cunningham: I think this is part of the reason we are here today and part of the reason we are looking at amendments to the legislation. We do not begrudge regulatory controls; what we are looking for is reasonableness. We would like to lay to rest the aspect that we represent totally self-centred business interests with no idea of the public good or the the depositors' good. We view it as something in which we do share a responsibility with the government, and we would like to work at improving that.

Mr. T. P. Reid: We are not passing laws, presumably, for you people; we are passing them for the one or two who might take a different view of the world.

3:20 p.m.

Mr. Cunningham: I submit that may be a problem. I hope we are not passing laws and legislation that are designed for people who are prepared to abuse them at any cost. If this were a utopian society, we would not need criminal laws. I submit that to try to pass a piece of legislation to prevent abuse is something you gentlemen will not be able to accomplish because of human nature. We can only hope we pass reasonable and sensible laws and have communication and dialogue to prevent it.

Mr. T. P. Reid: You keep leading me on with communication. Were you people aware of what was going on with those three other companies?

Mr. Cunningham: I would have to say we had an inkling something was awry.

Mr. T. P. Reid: I am constantly amazed. I come from a small community where everybody knows everybody else's business before it even happens. I have been around a long time. It seems you are the only group that seems not really to have known what the guy next door was doing, how he was doing it and where it went.

I presume from your response there was no communication, to use your term, from either you people individually or as an association to the registrar to say, "We have an inkling," or "We think there is something you might want to be aware of with these companies."

Mr. Cunningham: I submit that is one of the reasons we have presented in our brief that we would like to see a better level of communication and liaison with the ministry, because I would like to say we are not entirely blameless for not communicating and expressing our concerns. However, were we asked, were we consulted and should we have been? Yes, I think we should have.

Mr. T. P. Reid: Communications go both ways, but I appreciate your candour. You are the first one who has said, "Maybe there is some responsibility on our side."

Mr. Cunningham: I hate to bring something up that is on a more personal basis as a situation, but I did present the ministry at one time with my concerns on a particular company. It was not acted upon because it was not my concern. I do not feel that is the type of dialogue we should have. It should be an open communication.

Mr. T. P. Reid: That might be an interesting line of questioning, Mr. Chairman, but I have a feeling you will not allow it so I will quit.

The Acting Chairman: I was watching your questions quite closely, or listening to them at least. I am not a lip reader yet.

Mr. Thompson had something he wanted to raise.

Mr. Thompson: For the information of the committee--and Mr. Cunningham may wish to comment--the brief I read says the

association represents Ontario-incorporated small loan and trust companies. A quick review of the 18 shown indicates to me that eight of them are not Ontario-incorporated companies and that one of them is out of the jurisdiction and is not registered in Ontario, although it shows a Toronto address. I thought I would make that information available to the committee.

Mr. Cunningham: That is correct.

Mr. T. P. Reid: Can you list whom you are representing? That might solve the problem.

Mr. Cunningham: That is actually a misstatement in the brief. I am sorry; it is an omission. I meant to mention in the first instance that we are actually not all Ontario-incorporated companies, but more so Ontario-licensed companies, save and except--and I think it is the one you are pointing to--Confederation Trust Co. which has an application before the Ontario government for licensing here.

Mr. Thompson: I have no application. I have an investigation.

Mr. Cunningham: I stand corrected.

Mr. T. P. Reid: Can you name for us the ones you are representing?

Mr. Breithaupt: You are representing them all.

Mr. Cunningham: Yes.

Mr. Breithaupt: These are companies operating in Ontario.

Mr. Cunningham: That is correct. They are either incorporated or licensed to operate, with the exception of Confederation.

The Acting Chairman: Mr. Boudria having departed, there will be no other questions. It was a pleasure having you with us.

APPRAISAL INSTITUTE OF CANADA

The Acting Chairman: The next organization wishing to appear is the Appraisal Institute of Canada, the Ontario association thereof, Messrs. Brock, president, Mason, North, Burton and their counsel, Mr. Onyschuk.

Mr. Onyschuk: Perhaps I could just introduce the delegation and then I will sit down and they will carry on. Mr. Mason will actually lead in terms of the discussion to highlight points of the brief. Bob, you can sit next to me.

The president of the Ontario association of the Appraisal Institute of Canada is Michael Brock, sitting in the middle. On his left is Mr. Lincoln North, who is a past president of the Appraisal Institute of Canada as well as a member of Ontario. Mr. Peter Burton, at the end, is the executive director of Ontario.

The Acting Chairman: Thank you very much, Mr. Onyschuk. All right, Mr. Mason, if you want to proceed, please do.

Mr. Mason: Thank you, Mr. Chairman. We have provided you with a copy of a brief submitted by the Ontario association. I do not propose to read that brief, but to summarize some of the very important issues we feel should be drawn to the committee's attention.

The brief commences with a background of the Appraisal Institute of Canada, which is the largest and oldest national professional appraisal organization in the country. We have approximately 8,000 members across the country. Each province has its own provincial association, and we represent the Ontario association.

In the province we have approximately 2,500 members. Of this total, 654 are fully accredited members, having the AACI designation, accredited appraiser, Canadian institute, and 430 of those members hold an intermediate designation, the CRA, Canadian residential appraiser. We have 16 local chapters in Ontario that each elects one member to the provincial council.

The national association, the Appraisal Institute of Canada, establishes educational standards, administers a recently adopted articling system, sets examinations and administers a demonstration report-writing program which is required of all candidate members in the institute. The national body also administers the regulations, which include a code of ethics and standards of professional practice.

Mr. Burton, the provincial association's executive director, will speak on the requirements for designated membership in our institute and will touch on the recently adopted articling system.

Mr. Burton: Mr. Chairman, I refer to the brief in your possession, schedule A, which specifies requirements for designated membership. I would just highlight the requirements for accreditation of the designation on page 5 of the exhibit. They outline a number of courses and other requirements required to get that designation.

I would like to point out that the basic appraisal courses, which we refer to as 101, 201 and 301, are conducted by the Appraisal Institute of Canada. The other academic requirements must be taken at a recognized university and must be part of a degree program. It is part of our efforts to attain true professional status.

I would also advise that we are in negotiations with York University, in conjunction with the Ontario Real Estate Association, the Institute of Municipal Assessors of Ontario and the Real Estate Institute of Canada, to develop a degree program which will ultimately be a bachelor of administration, specializing in real estate.

Page 14 of exhibit A shows the guidelines for awarding experience credits. To attain the Canadian residential appraisal designation, two years of experience credits are required, and for the AACI, the full accreditation, five years are required. The candidate attains experience and submits it for approval prior to his designation being granted.

I now refer to exhibit C, which is indicated as the preliminary guidelines for articling. As of September 1, 1983, experience credits must now be received under the guidance of a sponsor who must be a fully accredited member. The revisions, therefore, for requirements for designation have been somewhat revised. For the Canadian residential appraisal designation, a year and a half of articling experience is required, and for the full accreditation, the accredited appraiser of the Canadian institute, the articling experience requirement is now three years.

3:30 p.m.

It is felt in the best interests to have this experience so guided and monitored as it is accumulated rather than at the completion of the time period.

I think those are the highlights, Mr. Chairman. If there are any questions, I would be glad to answer them.

The Acting Chairman: Are there any questions of Mr. Burton in respect of training and qualifications? Go ahead then.

Mr. Mason: Carrying right along then, gentlemen, we have included in our brief a copy of the institute's regulation 1, which is the code of ethics and standard of professional conduct and standard of professional practice for members of our institute.

This document sets out the institute's requirements of its members and we set out, particularly in part C of the regulation, what we believe to be the minimum standards for an appraisal report. This sets out some 10 areas which must be covered by an appraiser in completing a report which would conform to the institute's requirements.

In our brief we touch upon the disciplinary action which could be imposed by our national professional practice committee. This, again, is covered in regulation 1, a copy of which is included in our brief.

The basic function of our professional practice committee is to administer the code of ethics and the standards of professional practice and conduct. The committee receives complaints on appraisal reports, it investigates those complaints and ensures compliance with our regulations.

The committee can itself impose disciplinary action of a minor nature, such as admonishment and reprimand, and regularly imposes educational requirements on a member found to have contravened the regulations. Contraventions of a more serious nature require a recommendation of the committee to the national

governing council of the institute. That recommendation may be appealed by a member, initially back to the committee for some leniency or perhaps for some further explanation, but once the matter is passed on to the national governing council with a recommendation of disciplinary action, the professional practice committee has finished its job.

At that point the member against whom a complaint has been lodged may appeal any proposed disciplinary action directly to the national governing council. We are right now in the process of adopting a formal appeals process with an appeal tribunal.

We have included as schedule D to our brief copies of some recent disciplinary action imposed by the professional practice committee or recommended by them to the governing council. There are some suspensions recorded, some censures with publication and some expulsions.

We are concerned, as are you, about situations that have arisen in the greater Toronto area, particularly over the last couple of years in respect of the Seaway Trust, Greymac and Crown Trust affairs. Our committee, the national professional practice committee, and our national governing council are vitally interested in this matter.

I am not at liberty to discuss in full the actions of the committee or governing council, but I can assure you that the matter is under active investigation by the national governing council and by the disciplinary committee. Interim recommendations have been made by the committee and we are still investigating the entire matter.

I would say that this has been somewhat difficult in that the province itself has not yet completed its investigation and released evidence which it may have obtained. Until some of that evidence is released, we at the institute level cannot investigate those same matters to ensure compliance with our regulations.

We have touched on the areas of conflict in our brief. Some aspects of our own regulation 1 cover matters of conflict of interest. We have some concerns about conflicts which sometimes arise in the trust industry where frequently, and particularly for residential purposes, the employee of the trust company is essentially a mortgage development officer. He wears a second hat as an appraiser and a third hat as the mortgage underwriter who would process or approve the loan based on an appraisal he made on a loan which he generated as development officer. We have some concerns about that.

We touch on accountability. We take our responsibility seriously. I would advise you that six or eight months ago the national governing council instructed the professional practice committee to investigate fully the entire ramifications of mandatory professional liability insurance. We have meetings commencing tomorrow in Winnipeg, at which this committee will resolve this matter preparatory to a recommendation to the national governing council which will go before council in June in Toronto.

Essentially, the consideration will be for practising independent appraisers to carry professional liability insurance. This would not, of course, extend to any responsibilities where fraud or criminal activities are involved on the part of the member, but where, through the use of an appraisal completed by one of our members, fraud or criminal activities are involved, provided our appraiser is not directly involved in that the insurance coverage should assist in making good some of the damages.

We discussed the question of market value. We would certainly recommend that there be no change in the concept of value. We consider market value or fair market value, as sometimes discussed, as being the standard that is adopted by appraisers in the mortgage field. We believe that most objectivity can be obtained in this manner, particularly if there is in the legislation a definition of market value and where there are some standards adopted.

We, of course, would suggest that if standards in the mortgage industry were to be similar to those which are set out in our own regulation 1, part (c), those 10 minimum standards, we believe the greatest level of objectivity can be achieved.

We think it is inappropriate for the legislation to adopt any definitions in respect of forced sale or foreclosure values. The question there would be how much force and how quickly and so on. This gets out of the area of objectivity.

Mr. North, our past president, will shortly discuss the question of market value and how one goes about estimating value. It is our view that the question of forced sale value lacks objectivity.

We believe the question of prudent lending policies is the function of the underwriter of the lending institution. Currently there is a limitation, 75 per cent, for a conventional mortgage loan. It is our view that this is probably most appropriate, particularly for residential purposes, in that it does enable first-time home owners particularly, or people with a relatively small amount of capital, to acquire a home. Any reduction of that current 75 per cent maximum level would have some dramatic effect on the new housing market and the overall real estate market.

If it were reduced, many prospective purchasers would be forced into the secondary market, into the secondary mortgage field, frequently at considerably higher rates. This would again put at risk the first-mortgage lender, the trust company, with the problems of foreclosures and powers of sale and so on.

Any change in the ratio for residential units would, in our view, have a high social cost. Apart from the last three or four years, the 25 per cent equity has usually been sufficient to satisfy a mortgagee's requirements in a forced sale situation.

3:40 p.m.

In respect of ICI properties--investment, commercial and institutional properties--apartment buildings and so on, currently there are many trust companies which adopt some measure of caution and prudent standards by ignoring the market evidence on, shall we say, rates of return. They require a property to show a return which is tied to the current interest rates or current mortgage rates. In that manner, the maximum loan ratio is generally considerably less than a maximum loan based on the market value.

I would now ask Lincoln North, past president of the Appraisal Institute of Canada, to address the committee on the question of market value and how we, as appraisers, go about our daily work.

Mr. North: Thank you, Mr. Chairman. I would like to take maybe five or 10 minutes of your time to give a brief overview of what we do and how we go about our work in our quest for this estimate of market value. In a desire to be concise I may omit a few points, but in that regard I would ask that you pose any questions to me that my remarks may engender.

I would like to use a small mall as a focal point of the discussion, although the basic principles and procedures will be the same as they apply to any other type of property. I would tend to break my activities into three areas.

First, an appraiser will go through a diagnostic exercise of the asset he is working on. I mean by this, if it is a small mall, he will visit the property, walk the mall, become familiar with the property. It is part of the psyching-up process he has to go through in preparation for the commencement of the actual appraisal assignment.

This familiarization process will also carry outside the four walls of the building he is working on into the surrounding exterior of the building and into the neighbourhood or the location in which this property is sited. The subject of competition, the availability of other buildable sites in the area and so on, eventually will have a bearing upon his final estimate of market value.

Such an investigative or diagnostic process may take anywhere from an hour up to perhaps a day or a couple of days, depending on the size and complexity of the asset being evaluated.

Having completed this part of the task, the appraiser's role changes almost to that of an auditor. For an evaluation of an investment property, the next element to be ascertained is the flow of earnings. This is what an investor is buying. Where are the earnings generated, from what sources and in what quantities? What occupancy costs are required to sustain those earnings? Finally, what is left over for the investor?

Such a process entails the reading of all the documentation that pertains to the operation of the property: leases, management agreements, cross-parking agreements and so on. This part of the exercise may consume anywhere from several days to several weeks. It is only completed when the appraiser reaches the point that he

has confidence in his knowledge of where the moneys are coming from and where they are going.

Having completed the auditing function, as it were, then the valuer turns his attention to the market.

The big question that arises at that point is what rates of return are prevailing in the market at that point? How are investors looking at that property? Are they buying it for certain price-earnings ratios, a price per suite or a price per acre? If so, what unit values does the market attach to those units of comparison at that point?

That is where the judgement process becomes probably all-important, because it is a comparative process where the valuer is ranking the characteristics of the property he or she is working on to those of similar properties in the marketplace that have sold.

The outcome of that third step, in fact the outcome of all three steps, is the formulation of an opinion of value. It is not a scientific process. It is an estimate or opinion, but it is based upon as much fact as can be possibly and probably analysed during the course of the survey.

Finally, the valuer is required to reduce his findings to writing. At times this can be a long and arduous process. There is no given length for a particular report. It may be a couple of pages or 100 pages or more. In a way it is like tailoring a suit. When everything is put together, you know you are finished. The important part of an appraisal report is that it should stand on its own.

I believe that as far as I will go in explaining the appraisal process.

The Acting Chairman: Thank you very much, Mr. North. Are there any questions?

Mr. Renwick: There is something I have always been curious about. Say you are doing an appraisal for an established, knowledgeable trust company, and that trust company has an executive staff and a committee, a mortgage committee or whatever the appropriate committee is, what additional judgemental factors can a knowledgeable committee bring to bear on the result of your appraisal?

Say you have done your appraisal and you have come up with a figure or a range, what elements are missing from your appraisal that could legitimately be in the minds of experienced members of the business community that could vary or alter the appraisal you make?

Mr. North: Assuming as a typical appraiser I have performed my duties in arriving at an estimate of value that is reasonable and proper, that is when the underwriting process begins.

The committee you refer to would be confronted with questions such as: "Do we wish to proceed with a loan on that type of property or on that property in the given community?" "Are we concerned about matters external to the property and to the community itself that would bear on our decision as to the loan-to-value ratio?" Perhaps they would be concerned with the borrower's ability to make the payments on the loan, aside from the question of market value.

I am sure I can list numerous objective sources--

Mr. Renwick: But with respect to the question of the value you have arrived at by the legitimate process of your profession in valuing a property, when you come up with a dollar value or a range within which you say that is the fair market value and the best possible professional judgement, what capacity is left in a judgemental sense with respect to a board of directors, or down the line, the mortgage appraisal valuator for the trust company or the mortgage committee in making the decision? Can they alter in any way the price you have placed on it?

Mr. North: Yes. They can disagree with my opinion.

3:50 p.m.

Mr. Renwick: They do not want to disagree with your opinion. They are not trying to second-guess you. I am not talking about second-guessing. I am talking about a situation where you have worked with the company for many years and you have done their appraisals for them. There is no question of disagreement about your professional capacity or the accuracy of your work.

You have arrived at a dollar value and they say, "For the business purposes of this company, our view is that we think it is legitimate for us to value this at 25 per cent more, 25 per cent less or whatever the rule is."

Mr. North: In my experience as a typical appraiser, they have not tended to adjust my opinion of value. If they adjust anything, it will be the loan-to-value ratio. Rather than lend up to the maximum 75 per cent, there may be reason to reduce that ratio to some other given amount.

Lenders also have a secondary yardstick they use in addition to the maximum loan-to-value ratio and that is what is frequently called a revenue achievement formula. The rental income generated by the investment must cover the debt service on the loan by at least 115 or 117 per cent. They may adjust that ratio.

If they are adjusting values, they are adjusting those two ratios of loan to value which will dictate the exposure of the mortgage to the full market value.

Mr. Renwick: When you are valuing residential property in Ontario, what effect do you give to the rent control legislation?

Mr. North: I am not a specialist in residential rental properties, but the viewpoint of the appraiser with regard to any legislative or statutory controls that affect the property are how it will influence the flow of earnings. If there are fewer earnings, there is less value. If there are more earnings, there is more value.

Investors buy with prospects of what will happen in the years to come and if a property is free to adjust itself to the market with the passage of time, its value may be different from what it would be if those revenues are curtailed.

Mr. Renwick: As you are aware, we have a law in Ontario which controls the extent and degree of rent increases that were going to be available to landlords, whether they were the original landlord or a purchaser with respect to buildings constructed prior to 1968 or whatever the date was.

If you were advising an intending purchaser on what he should purchase, would you take what the law said was available to him by way of pass-through of costs into account in advising as to what price could be paid? In other words, do you take rent control legislation such as that into account and if so, how?

Mr. North: Yes, we do take it into account in the sense that the presence of such legislation creates two basic markets; those properties that are controlled and those that are not. The best way for the valuer to take it into account, whether it be as valuing a controlled property, is to rely on market evidence of sales of other controlled properties, so he is not mixing apples with oranges, because each of those two segments of the micromarket will function a little bit differently.

Having arrived at an opinion of value, the question of advising a person on what he should or should not pay is a separate and distinct function beyond the appraisal function.

Mr. Renwick: Do you perform that?

Mr. North: If requested to do so, we will.

Mr. Renwick: If requested, how do you do that? You have done the appraisal and the fellow asks, "Now what should I pay for it?" If it is a controlled property, what are the add-ons that you take into account in making or giving that advice?

Mr. North: The advisory capacity following the appraisal is more consultative in nature. If the investor really wants that property, we would say, "If you want the property, it is going to cost you so much." That fact is established.

He might then say, "There is not much left in the bottom line, is there?" I might say, "No, there is not."

"What do you think I should do?"

It is a bit of throwing the ball back and forth. It is

difficult for me as an adviser to try to put his shoes on and make his decision for him.

Mr. Renwick: My questioning is dreary; perhaps my friend Mr. Reid will help me.

We were placed in a position in the Legislature where we passed a law to change the law as it existed at a particular time with respect to the pass-through of costs.

Say you had made an appraisal of a controlled building and you had then been consulted about your wider or other judgement in an advisory way as to what was to be paid. You had legal advisers and accountants who looked at the question of what the law was at that time and what pass-through would be permitted, what rent increases could reasonably be anticipated over the next five or 10 years and so on, and you came up with a price.

The assembly, one of the players in the game, then changed the rules. Is that an error in judgement? What is that?

Mr. North: If the appraiser goes into the consulting role beyond the estimate of market value, the first thing he must distinguish is what is a probability versus a possibility. In that regard, probabilities are not too long in their time frame. Anything is possible.

I do not mean to be cute in using that expression, but as to the probabilities of the continuance of certain legislation, that is quite short in scope. If legislation affects the value of the property, the investor himself is going to have to gamble when he makes the decision. No valuer or appraiser can be or should be encouraging in that respect.

Mr. Onyschuk: If I may interject to help the discussion, the discussion at the moment is dealing with the advisory capacity, that an appraiser may assist a client after he has determined market value, but the very point in our brief, which is the point we want to make, is you should put market value in the legislation and the appraiser's report should be based on market value, not on what one might call lending value or how an underwriter might later assess that property either up or down for lending purposes.

Mr. Renwick: Or an intending purchaser.

Mr. Onyschuk: Or an intending purchaser.

Mr. Renwick: What you are saying is, we should put it in here that for the purpose of the 75 per cent rule with respect to mortgage value, the ultimate final figure is the figure arrived at by members of your professional association.

Mr. Onyschuk: I think a qualified appraiser can give you one opinion that you can rely on with some objectivity and that is market value. There are books on the subject. It has been in the Supreme Court of Canada for over a century and if you--

Mr. Renwick: That is why it is so clear.

Mr. Onyschuk: It is relatively clear, but it is where you get into the other area of discussing the underwriter's approach: "What rate of return should I be looking at? Can I expand the bottom line?" It is with the advisory capacity which goes after and beyond the appraisal report that you run into problems.

Mr. Renwick: That still does not mean the ultimate decision made by an intending purchaser or an intending lender is wrong. It is ultimately a judgemental question.

Mr. Onyschuk: That is right--of that lender or purchaser.

4 p.m.

Mr. Renwick: If you were advising with respect to the existing law and the date of a particular transaction in Ontario with respect to the rent control legislation on a controlled building, would you simply qualify your opinion that those guys at Queen's Park might change this tomorrow?

Mr. Onyschuk: No. An appraiser would have to operate under the law as it stood at the time he did the appraisal. He has to take that law as a given. If subsequent legislation comes around to change one of the variables, the appraisal report has to be redone, or may have to be redone. You work with the laws that exist at the time of that appraisal report.

Hon. Mr. Elgie: As I understand it, Mr. North, you also have to look at what other similar properties are selling for at that time to make those determinations of what that controlled building is worth.

Mr. Onyschuk: That is right. That is where the definition of market value which those of us who are lawyers find in (inaudible), etc. and in the courts are helpful, I think.

The Acting Chairman: There is no aspect of fortune telling in it?

Mr. Onyschuk: Right.

Interjection: Or reading the mind of the Legislature in advance.

Hon. Mr. Elgie: Or--what was the phrase we heard from another group?--listening to client-dictated values.

Mr. Renwick: Or the expectations of what would happen when a government has been in power for 43 years. You would not take that into account as evidence of the stability of the laws they pass.

Mr. Crosbie: Could I pursue one point? There is an element of prediction which I thought was taken into account. That

is that when you are looking at the potentiality of land, you take into account potential changes in its use.

For instance, the possibility of a municipality changing a zoning bylaw to permit a higher use might be an element of value. In those cases, you are speculating on the legislative process. The fact that there is a high degree of potential that the land will be rezoned to higher use still may be a legitimate element of value in selling the land,. Is that not a correct appraisal principle?

Mr. North: Yes. Where a property is in a transitional state. For example, if a parcel of land is in a transitional state from rural agricultural to commercial use, the appraisal could end up presenting two opinions of value as a point of commencement. The first expression of value would be based on continued use as agricultural land and the estimated value of the lot would be based on its transition, or its rezoning to commercial land.

Mr. Crosbie: It is fair to say, I assume, that people buy on the basis of a potential change in zoning and they would pay the higher price in anticipation of that.

Mr. North: Most definitely, they do. It is almost a basic rudiment that people are buying on expectations of the change, and it would be the extent of probability of that change occurring.

Mr. Crosbie: Conversely, if there was a significant expectation of a down-zoning, that would have a negative impact on value.

Mr. North: Yes. That happens on occasion as well.

Mr. Crosbie: That is speculating on legislative process.

Mr. North: Yes, but the appraiser is not so much doing the speculating. He is setting out an answer pursuant to each group.

Mr. Crosbie: I realize that. All I am saying is that an appraiser looking at a property would look at all the potentials, one of which might be legislative change.

Mr. North: Yes.

Mr. Crosbie: That is the only point I was making.

Mr. Onyschuk: To complete this point, though, the courts have determined what are proper discounts to be applied against such future speculations in value, as has the land compensation board.

Mr. Crosbie: I do not disagree with that. All I am saying is that they have recognized the validity of looking at, or speculating, on legislative change.

Mr. T. P. Reid: We had before us the Canadian Society of

Appraisers. What is the relationship between them and you?

Mr. Mason: There is no formal relationship. Some members of the Appraisal Institute of Canada hold memberships in both organizations.

Mr. T. P. Reid: When they were here they indicated to us that in their case study of the situation we are not allowed to refer to, they did appraise those properties at \$330 million. Without trespassing on the confidentiality of whatever is going on in your organization at the moment, have you people done a similar study or looked at that, as either a case study or a matter of interest to your members?

Mr. Mason: No, we have not. The Canadian Society of Appraisers' presentation, the case study it made, referred to one single property. They transposed the value they found from that property to the value of the entire portfolio under consideration, which came to the figure of \$330 million.

I do not believe they have undertaken a case study on all the properties involved in the transactions which we cannot mention. We have not ourselves undertaken such a case study.

Mr. T. P. Reid: I did not understand what they did. They took one instance and extrapolated it to cover the whole portfolio, is that what you are saying?

Mr. Mason: In a sense, yes. They had reference to a single report that was completed as part of the overall assignment in respect of the transactions. I seem to recall that report had a recorded value of about \$23 million. The individual who completed the case study on behalf of the Canadian society or the American Society of Appraisers, Mr. Beaton, valued that same property at something better than \$12 million, and that was the content of his case study. He applied the same ratios and proportions of that \$12 million to the \$23 million and worked backwards from the numbers--

Mr. T. P. Reid: Would you agree with his methodology? Maybe it is unfair to say off the top of your head, but would you say the figure he gave us was a legitimate one, given that?

Mr. Mason: I have no idea. I am sorry. We in the Appraisal Institute of Canada have been privy to only one report, and that was through the goodwill of the American society through the case study presentation put on by Mr. Beaton. That is the only report we have seen thus far.

Mr. T. P. Reid: Would it be fair to assume that you are going to do such a study? You have indicated that at the very least there is some investigation going on. Would you not need to do such a study yourself to see if the numbers match?

Will you do your own study to show whether the appraisals that were done were accurate or followed the methodology or whatever? How do you arrive at a decision on whether somebody has been ethical and competent?

Mr. Mason: At this point, we do have one report which has been subject to review, and the national professional practice committee can make the decision on the basis of one report. The same type of decision might not necessarily apply to all the reports in the portfolio.

Mr. T. P. Reid: One of your members indicated that you can lift somebody's licence as a disciplinary action. Does that mean they are no longer members of your association but they are still able to practise?

Mr. Mason: Yes. There is no licensing, as you are probably aware. As an institute we are able, in the most extreme case, to expel a member. That does not preclude that member from continuing to practise as an appraiser, provided he still has clients.

4:10 p.m.

Mr. T. P. Reid: I would like to go back to fair market value, which you strongly suggest should be incorporated into the legislation. I got two messages. One was that in some cases arriving at a fair market value was more of an art than a science. But the Canadian Society of Appraisers was quite adamant that in the specific case we are not allowed to refer to, it was a pretty scientific figure it came up with, based on what other similar properties in the area were selling for.

If you have that kind of information, then you--or anybody else--can give us a fairly accurate definition of market value. It is more a science than an art, you would say--I am putting words in your mouth.

Mr. Mason: Given the extent of market value and other data available in certain situations, it can almost become a science. Some scientific principles can be applied, but it is very frequently an art because of the judgements involved on the part of the appraiser.

Mr. T. P. Reid: We are all shying away from one problem, although you indicated you are looking into it. If someone wants an appraisal on a building that you are selling--perhaps more so than one you are buying, but in the other unmentionable case it is the reverse--it does not seem to be overly difficult--maybe this is unfair--to get the kind of appraisal you want to get if you search long enough to find somebody who might do as he or she is asked.

How do we deal with those kinds of situations if you have no sanctions other than to lift their licence? Presumably the government has none, other than the possibility of laying fraud charges. Have you any suggestions on how it can be better regulated?

The Acting Chairman: I thought the only sanction they had was to expel the member.

Mr. Mason: Clearly, in any industry or any profession,

one can have the bad apples. We believe we have appropriate safeguards in place to regulate the vast majority of our members who attempt to act in an ethical and prudent manner.

Once in a while we have a member who does not act in that manner. When it is drawn to the institute's attention, appropriate action is taken. That action could extend to expulsion. At that point, since there is no licensing, there is nothing further the institute can do, save to publicize that expulsion, as we do.

Mr. T. P. Reid: That was the next question. How do you publicize that?

Mr. Mason: We can publicize for censures. We have two categories of censure; censure with and without publication. The publication can be limited to internal use, if you will, through the use of our own internal media. There would be a notice in our journal or newsletter that a member has been found in contravention of certain sections of our regulations.

For suspension and expulsion, the circulation goes far beyond the internal. It always extends to publication in the public media, the public domain, in the area where (a) the offence took place and (b) where the individual appraiser practises.

Mr. T. P. Reid: There is no requirement for you to alert the registrar on something like this?

Mr. Mason: I do not think there is any requirement on the part of our own regulations. I am sure there are no governmental regulations and legislation that require us to act in that manner, no.

Mr. T. P. Reid: Do you want to ask your question about self-regulated bodies before we pass that?

Mr. Renwick: Again, I do not know whether I am going to be able to phrase the question properly. I take it that what you are saying--and from what Mr. Onyschuk has said and nodded approval for when Mr. Reid was answering--is that while there may be differences between appraisers as matters of judgement within some narrow limitation, that, coupled with the exercise of your profession and the legal precepts that have been developed in the courts with respect to something called ascertaining fair market value in the sense of that definition, there is something called one and only fair market value for any particular piece of property, there is no room for anybody to say it has a different value for a different purpose in any way at all, and that if we were to put the definition into the statute, "value," where it is used in loan and trust corporations with respect to real property, is a readily ascertainable figure if the process is proper. Is that what we are saying?

Mr. North: It is the most common measure of value. If a group of valuers or appraisers were asked to estimate a choice of 10 different types of value, invariably they would be closest on market value because that is a price something will sell for. It has been with us since day one.

Mr. Renwick: Could you help me a little? I do not know whether I am getting to what I have, in a laboured way, been trying to find out.

What other kinds of value are there? If you were to list by name the different types of value, what are they and what are the differences in arriving at that value?

Mr. North: I would say there are two main types of value, other than market value. One would be insurable value; the insurable value of a building is usually based on the replacement cost of the building. It is a cost-motivated value.

The other type of value other than market value commonly used in industry is what we call going-concern value. The going-concern value of an asset would be the value of the asset for continued use as a part of a going concern.

For example, a manufacturing company may create a special purpose type of building that suits the manufacturing process of that industry. The going-concern value of that building could be something special to that industry, going-concern value generally being something higher than market value.

Other than those three types of value, there is not much else unless somebody is just throwing adjectives around. Basically that is it.

Mr. Renwick: Can you analogize from a manufacturing operation as a going concern to the Cadillac Fairview residential property portfolio as a going concern with respect to getting a value which would be different from fair market value?

Mr. North: Very seldom do investment properties that stand on their own two feet have any special value other than market value unless it is the only hotel in the national park, or the last lunch counter in a tourist area or something such as that, which would be an investment property but by reason of its uniqueness might have special value. But a commonly traded type of investment property, no; it will seldom have a special value.

Mr. Renwick: From the point of view of the portfolio of residential apartment buildings owned by Cadillac Fairview which were operating from day to day with tenants who were paying their rents, with the whole paraphernalia of that business of operating those residential properties, there was no different way one could value those properties.

Mr. North: Not in my opinion, but I can only speak as an individual.

4:20 p.m.

Mr. T. P. Reid: May I ask a supplementary? That being the case, if we accept what the Canadian ASA Society of Appraisers told us, the fair market value for that property was \$330 million, yet the willing seller sold it for \$270 million.

Hon. Mr. Elgie: They made it clear they wanted to get rid of the properties. Therefore, they were a different kind of seller. Had they not indicated to the marketplace that they were going to dump it, then they would have been in the ordinary market situation. That is what they said.

Mr. Renwick: You mean they were not dealing in the open market?

Hon. Mr. Elgie: They indicated their intention to sell quickly. They wanted to get rid of that portion of the portfolio.

Mr. T. P. Reid: Nobody was forcing them to sell. True, they were under some pressure because of their debt load, but they were a willing seller.

Hon. Mr. Elgie: Sure they were.

Mr. T. P. Reid: Nobody was foreclosing on them. They were in no immediate danger of going bankrupt. So they were presumably a willing seller.

The Acting Chairman: I would say overly willing.

Mr. T. P. Reid: Perhaps. We seem to be going around in circles. We are told the fair market value was \$330 million, yet they sold it for \$60 million less. To me that throws the whole thing into a cocked hat.

Mr. Onyschuk: Not really. From a legal point of view, the words "open market" have a specific connotation. Open market means sold within a reasonable period of time. That may be more than 60 or 90 days for a single-family house, and if it is a lousy market, you may have to wait six months.

Perhaps Mr. North or one of the other gentlemen would care to comment on that. The open market concept requires a time frame within which a property can be sold to realize its appropriate or full market value. Am I correct?

Mr. Renwick: In reading the account of what went on, it appears Cadillac Fairview was looking to get the best open-market price for it. They went through various actions to try to make certain that nobody thought they were a default seller or dumping the properties.

Mr. Onyschuk: I am not defending it one way or the other. I am just saying that in the concept of market value as determined by the courts, this question of a reasonable time frame is included.

Mr. T. P. Reid: I appreciate that, but it does not answer the question. They told us the property was being sold at fair market value. Was that not the phrase used, "fair market value"?

Mr. J. A. Taylor: No, they distinguished value from

market value and fair market value, but I think they were talking about market value, period.

Mr. T. P. Reid: Refresh my memory, Jim. What was their definition of market value?

Mr. J. A. Taylor: It eliminated the willing seller/willing buyer and the time frame. It used to be defined as "exposed to the market for a reasonable length of time." However, this was eliminated from their definition.

Mr. Crosbie: There was also another factor. I do not recall the precise timing but the market value date set by Cadillac Fairview was not the market value date of the resale. There was a significant change in interest rates in the interim.

Mr. Renwick: It does not seem to refute what Mr. Reid was saying, which was, a fair market value is \$330 million. In other words, if there has not been exposure to the market in the sense Mr. Taylor uses it, you would have thought the result would have been different.

Mr. Crosbie: What I was suggesting, Mr. Renwick, is that at the time the \$270-million value was struck, there was a certain interest rate and, several months after that, when the properties were resold, there was a significant change in interest rates which would have had a positive effect on the properties' value. So you would expected some increase in value to appear. I do not pretend to know how much of an increase, but you could have expected some increase.

Mr. T. P. Reid: That is not the way I understand what they said to us. They were quite adamant in saying that the market value at the time the sale was made was \$60 million more than what Rosenberg paid.

Mr. Crosbie: I agree, but when was the sale made? If it was as of the November date for the purposes of putting a mortgage on it by the trust companies, that would have been the date. But the date at which Rosenberg bought the buildings was some months in advance of that date when Cadillac Fairview put the \$270-million value on it. That is the only point I am making.

Mr. J. A. Taylor: Perhaps, Mr. Chairman, we can clear up what was given to us under the heading "Meaning of Value." This was the Canadian ASA Society of Appraisers. It says:

"A number of shades of meaning surround the use of the terms 'value,' 'market value,' 'fair market value' and 'mortgage value.'

"The term 'value' is used in the Loan and Trust Corporations Act but the word is not defined for the purposes of the act.

"The white paper introduces the term 'fair market value.' This is the term used in the federal Income Tax Act. There is no definition in that act and the meaning of fair market value goes with the interpretations given in the federal and United Kingdom courts.

"Market value" is the term employed in the Ontario Expropriations Act and Assessment Act, both of which give the following definition, 'The amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer.'

Mr. Villeneuve: I think the very subject of our discussion here is why liability insurance to appraisers has gone up tremendously in the last year. I am quite aware of that. As you know, I am an appraiser.

Out in the countryside, there is another value, Mr. North. They call it distress and forced sale. That is a whole new kettle of fish again. When a financial institution happens to be the owner, funny things happen to values and it is a difficult one to describe and analyse. In the end, if we have enough of those they set a value which is a totally different value, but again it becomes fair market value in the long run.

Your definition is right, except that it is subject to many pressures from many areas.

Mr. Mason: If I might respond to that, it is perfectly true that when we have forced sale and power of sale situations it frequently does result in a different market. But that does not change the concept of market value. It becomes the standard for market value at that time, if there is a sufficient number of those sales.

As an example of this locally, Canada Mortgage and Housing Corp. distorted the value of condominium apartments, particularly in Mississauga and Oshawa, by repossessing a significant number and changing its policy from that of being a landlord and renting them to selling them, putting a whole slew of apartments on the market at a similar time and thereby distorting the entire market for that type of property in those locations.

That again is a market function that does not change the definition of value. It is the most likely sale price. You are competing with that type of situation.

We still believe the definition of value should be incorporated. It is the open market concept, a willing seller and willing buyer, and that any prudent lending policies be purely the function of the underwriters.

Mr. Renwick: You mean it is quite possible that Cadillac Fairview made a mistake?

Mr. Mason: That is entirely possible, but it is a pretty sophisticated organization in a business sense.

Mr. Renwick: I have seen a number of people who are extremely sophisticated with respect to the business in which they are engaged who are not sophisticated when they move out to do something else. We found that when Ontario Hydro decided to switch from the business of generating hydro power to building the building down here on University Avenue.

I have seen it with people who have run a company for a long time and think it has a particular value, but they have never actually had to sell it. It would not be the first time they have given it away when, if they had been properly advised, they would have got a great deal more for it.

I suppose if you walked up to an individual who has lived in his house for 20 years and said, "Your house is now worth three times that," the fellow would say: "Oh, you are crazy. No one would ever pay that." So, it is possible to be sophisticated in one way--

Mr. Mason: Yes, indeed.

Mr. Renwick: --and naive in another.

Mr. Mason: I think the committee should not, with respect, place undue reliance on an opinion, albeit from a fellow professional organization, if it has not had access to all of the material involved.

Mr. Renwick: It was not that. I just wanted to get out of the straitjacket in which the government has tried to put us--that is, somehow or other that was the basic fixed and fundamental price and everything over and above that had some element of fraud to it.

Mr. Mason: I have no idea.

Mr. T. P. Reid: You do not want to touch that. I do not think Mr. Mason can touch it. At the moment, it is the subject matter of a discipline committee report before the governing council.

Mr. Renwick: No, I would not. I was just expressing my exasperation.

Hon. Mr. Elgie: He gets irritable now and then. Just take it with a grain of salt, relax and let it go by, and the world is all right.

The Acting Chairman: But having vented this professional irritation, I notice that the time is now 4:30. Could we have one more fast round of questions or last-minute comments, gentlemen?

Mr. Renwick: Would you go so far as to say that there should be a high degree of standardization in appraisal forms? I do not mean that form will ever necessarily govern content, but do you think that trust companies should be expected to have on file a standard type of form with respect to the appraisal of buildings, so that at least all the proper items and questions are on there, and if people walk in to inspect them, they can expect to see an appraisal form for each piece of property which they hold?

Mr. Mason: We are certainly working to this end in the appraisal institute, and we have recommended to the insurance, trust and banking industries that a standard format be adopted,

particularly for residential purposes where, essentially, a form report is used but there is no consistency between the requirements of one company versus another at this time.

As far as a format for reporting a narrative-type report goes--and that is generally the sort of report prepared on an apartment building, commercial or industrial property--we, as an institute, have adopted our own standards and certainly require our members to conform to those standards in reporting to the trust companies.

Yes, we suggest that trust companies should require that there be some elaboration upon the minimum content, perhaps embodied in the act with the definition. We have elaborated on that in part C of our regulations.

The Acting Chairman: Mr. Mason, has your delegation concluded its presentation?

Mr. Mason: Perhaps Mr. Brock would like a word.

The Acting Chairman: I was going to give Mr. Brock the last word.

Mr. Brock: Thank you, Mr. Chairman. I do not want to take up any more of the committee's time. I would just like to thank you all for the opportunity to appear and speak on behalf of the brief, for the interest you have shown in it, and to say that we are ready to answer any more questions if you have them.

The Acting Chairman: Thank you very much. It being 4:30 plus of the clock, the meeting stands adjourned.

The committee adjourned at 4:34 p.m.

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J-28

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO

WEDNESDAY, FEBRUARY 22, 1984

Morning sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
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Renwick, J. A. (Riverdale NDP)
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Taylor, J. A. (Prince Edward-Lennox PC)

Substitutions:

Reid, T. P. (Rainy River L-Lab.) for Mr. Kerrio

Clerk: Arnott, D.

From the Ministry of Consumer and Commercial Relations:

Crosbie, D. A., Deputy Minister

Thompson, M. A., Superintendent of Insurance and Registrar of
Loan and Trust Corporations, Financial Institutions Division

Witnesses:

From the Canadian Bankers' Association:

Korthals, R. W., Chairman, Executive Council; President, Toronto
Dominion Bank

MacIntosh, R. M., President

Reid, A. L., Chairman, Financial Institutions Committee;
Manager, Interbank Operations, Royal Bank of Canada

Sinclair, H., Director, Public Affairs

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, February 22, 1984

The committee met at 10:07 a.m. in committee room 1.

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO
(continued)

Mr. Chairman: I see a quorum and the first and only witness of the morning. The deputy minister, Mr. Crosbie, is here.

The first presentation is from the Canadian Bankers' Association. We have Robert M. MacIntosh, Robert W. Korthals, A. L. Reid, and Helen Sinclair. Mr. MacIntosh, would you please introduce your colleagues?

CANADIAN BANKERS' ASSOCIATION

Mr. MacIntosh: On my right is Mr. R. W. Korthals, the president of the Toronto Dominion Bank and chairman of the executive council of the Canadian Bankers' Association. That is our governing body.

On my left is Mr. A. L. Reid, manager of interbank operations at the Royal Bank and chairman of the financial institutions committee of our association.

On my far right is Ms. Helen Sinclair, who is director of public affairs of the Canadian Bankers' Association.

We would like to thank you for the opportunity to present the banking industry's views on the Ontario white paper on trust and loan company legislation. It might interest you to know that to the best of our knowledge this is the first time the CBA has appeared before a committee of the provincial Legislature.

I would like to focus on four principal areas in the white paper: ownership; disclosure of financial information; business powers; and the question of the shared federal-provincial jurisdiction for trust and loan company legislation.

Our interest in appearing here today reflects in part the fact that provincial legislation affects the banking industry directly and indirectly, especially through its influence on those of our competitors who come under your authority. Just as important, in the wake of events of the last 18 months, we are vitally concerned that the rules governing the trust industry should be such as to help guarantee the integrity of the overall financial marketplace. As you are well aware, the erosion of public confidence in the financial system can never be confined to a single financial institution.

With this in mind, perhaps the most important point we wish

to make today is that broad ownership of the trust and loan industry should be legislated. This proposal enjoys support from some members of the trust industry itself. Only broad ownership will serve to prevent future occurrences of self-dealing by certain trust company owners to the detriment of public depositors and fiduciary clients.

This is in no way intended as an aspersion on the ethics of the vast majority of trust company owners. Laws are not made for the honest and reputable majority in any aspect of life, but for the minority who need to be restrained. It is a simple fact that the record of failure of financial institutions in Ontario, and in the US banking system as well, has been mainly attributable to the self-dealing by owners. It is also a simple fact that the only effective way to prevent such self-dealing is to require broad ownership.

Our 1982 brief to the federal government on trust and loan company legislation suggested that broad ownership rules should be confined to larger companies. In recognition of what has happened since that brief was written, our position now is that any trust company which accepts deposits from the public or offers fiduciary services to the public should be subject to these broad ownership rules.

Eliminating the potential for shareholders' self-dealing is necessary to protect the interests of fiduciary clients, many of whom, unlike depositors, are very restricted in their ability to move their business from one institution to another.

The second major reason for our position on ownership is that the absence of rules has resulted in a considerable amount of upward diversification through holding companies, in the field of activity which is denied to a trust company in its own statute. In the initial days of your hearings, Mr. Murray Thompson was questioned as to whether insurance is a permitted activity for a trust company. He referred you correctly to the prohibiting clause in the current act. Yet there are a number of examples of trust companies which are affiliated with insurance companies through a holding company parent.

Within the same conglomerate, in effect, both trust and insurance activities are being carried out. Surely this is not in the spirit of the act. It is fundamental to good and consistent legislation that a person should not be able to do indirectly what he is forbidden to do directly.

Through this upward diversification route, there is nothing to prevent a co-mingling of financial and nonfinancial activities. There are a number of such occurrences. It has always been a fundamental feature of the Bank Act since 1871 that a bank cannot engage in any nonfinancial trade or business. This basic principle should certainly apply to financial institutions coming under provincial jurisdiction, whether they be trust and loan companies, credit unions or investment dealers.

The risk in not adopting this principle is an excessive concentration of economic power in the hands of the financial

sector, which by reason of the nature of its business and its broad access to public funds could control large portions of the industrial sector. It is with these types of concentration we believe your committee should be concerned.

We have become accustomed to the assertion that the chartered banks are the foremost example in this country of economic concentration. That argument has no foundation. In the personal savings field, we hold 46 per cent of the market. In the residential mortgage field, we represent 22 per cent of the market. In the consumer lending field, we have 68 per cent of the market, from zero about 20 years ago. In each of these markets, we face active competition from a wide variety of financial institutions.

In the commercial lending field we do not know what percentage of the market we hold because we are one of the few industries which discloses the extent of this activity in a readily identifiable way. However, we compete with the commercial paper market, credit unions and caisses populaires that service the commercial credit needs of their customers, and to a growing extent with trust and loan companies. The latter are actively involved in providing commercial credit over and above the basket clause allowance by undertaking this activity with mortgage security, and by investing in corporate debt instruments such as commercial paper which qualifies investments under the act. One trust company even went so far as to incorporate a commercial lending subsidiary.

Moreover, the schedule B banks, despite their current problems with the eight per cent ceiling, have concentrated their activities in commercial lending and in so doing have provided a heightened level of competition for the schedule A Canadian banks in this area. It is only a simplistic summing of the total asset base of the chartered banks, with no regard to the different product and geographic markets represented in that base, which could lead to the false claim of excessive concentration.

Clearly, the degree of competition depends on the size of the market. In many US states there is no competition from big banks because of the unit banking system. As a result, the US banking industry, due to restrictions on branching, is undoubtedly less competitive with 15,030 banks than is the Canadian industry with 71.

I might add, indirectly, there is a move in the United States to concentrate the banking system by opening interstate banking, and the resistance is coming from the small banks across the country because they do not want competition from the big city banks there. That is a very important factor now.

As you know, the Canadian banking industry has 17 years of experience operating under broad ownership rules. In preparation for this appearance, we have gone back through the debate which led up to the 1967 Bank Act revision when ownership restrictions were first put in place. At that time, the House of Commons finance committee clearly expressed similar concerns about the concentration of power which could result if banks were permitted

to be closely held. Both the banking and trust industries appeared before the finance committee and we have been unable to find any opposition on the part of their witnesses to these rules. By the time of the 1980 revision, broad ownership was not even on the table as an issue.

The Ontario white paper attempts to deal with some of the problems posed by closely held ownership through measures which will require the vesting of a tremendous amount of discretionary authority in the registrar. Among his myriad duties, the registrar is to have the responsibility to examine significant share transfers proposed, not only by Ontario-incorporated companies, but by extraprovincially incorporated companies as well.

He will also have the authority to examine individual transactions between affiliated companies, or between a trust and loan company and its controlling shareholder, and to cancel registration when a company refuses to reveal its beneficial ownership. We have serious concerns with this approach to dealing with the problems of closely held ownership.

In the first place, it is essential to recognize that increasing regulatory responsibility does not guarantee that this increased responsibility can be effectively discharged. In this case, the burden of regulation imposed upon the registrar is so heavy that it is easy to imagine how enforcement problems could arise.

Moreover, this web of regulation, which may indeed be necessary in the absence of an ownership restriction, would be unduly costly to the regulated industry, as already stressed by the Trust Companies Association of Canada to your committee.

Furthermore, the white paper approach would not be effective. The risk of self-dealing would not be averted, as it is impossible to anticipate in legislation all possible conflict situations. This was recognized by the federal government in its 1982 Discussion Paper on Revision of the Trust Companies Act and the Loan Companies Act, and was one of the primary considerations which led the federal government to propose ownership restrictions.

We supported the thrusts of the federal proposals at the time, and continue to believe that a 10 per cent ownership standard, phased in gradually so as to accommodate divestiture activities, is the only simple, effective and fair way to prevent a recurrence of events similar to those of the recent past which have brought us here today.

This raises the question of what would be a workable process for a divestiture of closely held positions in trust and loan companies. The Bank Act does not allow for grandfathering of ownership positions; nor should the proposed trust and loan legislation.

You will note that our brief suggests a 10-year divestiture period, double that proposed in the federal government's 1982 discussion paper. Over this period, we believe, the capital markets would easily be able to absorb necessary shared

divestiture and new issue activity, estimated by the white paper at \$2 billion to \$3 billion. Total new equity issues in Canada last year alone were approximately \$6.5 billion and the dollar value of equity trading in the secondary market was in the order of \$30 billion.

These figures should place in perspective the concern expressed by many trust company owners that forced divestiture would impose undue hardship on them and would constrain trust companies' ability to grow. I should mention, though, that at the time of the 1967 revision of the Bank Act, some chartered banks had significant holdings in major trust companies. The 1967 act forced them to divest over a four-year period. To the best of my knowledge, this did not impose any hardship on our industry.

The position of current trust company owners is also that the divestiture would be a retroactive application of law. That is not an impressive complaint, when you consider that the public policy stance on this issue has been evolving in the direction of broad ownership over the last 20 years and that the closely-held positions of most of the larger company owners have been acquired in the last five years, with full knowledge of the fact that ownership restrictions were under consideration.

I now want to turn to the question of disclosure. The Ontario white paper proposals include a number of improvements in reporting requirements for trust companies. We certainly applaud the monthly reporting system being contemplated, as well as the proposal for greater uniformity in trust company internal records.

On the other hand, we are disturbed that the white paper makes no reference whatsoever to increased public disclosure. In fact, the only indirect mention of public disclosure is a recommendation contained in the Internal Review of the Loan and Trust Administration Financial Institutions Division that consideration be given to discontinuing the registrar's annual report, which is a public document, because it is not being produced on a timely basis.

We disagree vehemently with this latter proposal. The registrar's report, in the case of a nonpublic trust company, provides the only form of broad public disclosure to which nonpublic trust companies are subject. The solution to the identified problem is to produce it on time.

10:20 a.m.

One of the strangest claims to have emerged recently from industry spokesmen is that trust company disclosure requirements are more stringent than those of the chartered banks. The main supporting argument has been a reference to the requirement that trust companies provide the registrar with details of their loan portfolios on a loan-by-loan basis. The requirement applies apparently to all mortgage loans over \$250,000, all collateral loans over \$50,000, and all personal loans over \$10,000.

This requirement is not an example of disclosure practices at all. It is merely a case of undue discretionary authority

enjoyed by the registrar under current legislation. Presumably, the registrar is to be able to form a judgement of the quality of loan portfolios from these reports. Any banker will tell you that this is an exercise in futility.

Moreover, contrary to claims which have been made by a trust industry spokesman, these reports are not available to the public. In fact, to make them public would contravene the common laws concerning client confidentiality which have evolved over the last two centuries.

Our position remains that there is a need to improve the public disclosure standards of the trust and loan industry. Our view is that any institution which accepts deposits from the public should be subject to stringent public disclosure requirements. This is the case for the banks, whose balance sheets are required to be published monthly and annually. The banks' income statements must be published quarterly and the Bank Act even goes so far as to stipulate that they must appear in the national press.

Our reporting to the Bank of Canada is more frequent still, with key balance sheet information being submitted on a weekly basis. This information is consolidated by the Bank of Canada and published in its Weekly Financial Statistics.

We do not wish all of our miseries on the trust and loan industry, but we do believe that quarterly financial statements should be made public at a minimum. Quarterly statements are already the practice for the larger companies.

I would now like to discuss the white paper proposals dealing with business and investment powers. Let us deal first with those proposals relating to the manner in which the business and investment powers of the trust and loan industry are to be determined and, second, with the proposed range of powers set out in the white paper.

My earlier comment to the effect that the white paper errs on the side of vesting excessive discretionary authority in the registrar is exemplified in the proposals relating to business and investment powers. The registrar is to be given the authority to determine whether a given business activity is an acceptable activity for a trust or loan company, or whether the activity in question is better carried out by a commercial bank.

Effectively discharging this responsibility would require the registrar to develop a list of banking activities, a challenge which has eluded federal legislators for 130 years. The registrar is also to be given broad authority to intervene in the business activities of subsidiaries and to require divestiture of subsidiaries in extreme circumstances.

We strongly oppose these proposals. In our view, the general principle which should govern business and investment powers is that prohibited activities should be clearly specified in statute, and companies should be free to engage in nonprohibited activities, either directly in-house, or indirectly through

subsidiaries. Implementing this principle in Ontario would go a long way towards reducing regulatory burden.

Turning now to a discussion of specific proposals, I would like to stress that the Canadian Bankers' Association recognizes the need to legislate certain minimum prudential business and investment guidelines as quickly as possible. However, we feel strongly that it would be inappropriate for the government of Ontario to act apart from other jurisdictions in setting key business and investment powers for the trust and loan industry at a time when the appropriate mix of business and investment powers for the so-called four financial pillars is under review.

It is our view that if the white paper proposals regarding commercial lending were implemented, Ontario would effectively be shaping public policy in a vacuum. I want to stress the significance of these commercial lending proposals.

At present, commercial lending takes up about 40 per cent of the domestic assets of the chartered banks. The white paper proposes that trust companies be limited to a threshold of 15 per cent. It is important to recognize that this limit would not apply to commercial lending, secured by a mortgage, nor to trust company purchases of securities which are commercial loan substitutes.

The trust industry is currently heavily engaged in both types of activity and thereby manages to conduct significant commercial lending operations, in spite of the present basket clause restrictions. If the 15 per cent rule was adopted, the actual involvement of companies in commercial lending could probably go to double that level, that is to say, 30 per cent of assets.

What would then be the difference between our two industries? Probably only that trust companies would have a fiduciary role, whereas banks would not. Two of the four pillars of the financial community would effectively be merged in a trust company format, but the banks would still be confined to one pillar, commercial lending.

The trust industry takes the view that the four pillars began to crumble with the banks' entry into consumer and mortgage lending in the 1950s and 1960s. Neither consumer nor mortgage lending has ever been the preserve of any one of the four pillars.

Historically, insurance, trust and loan companies, credit unions and pension funds were all active in the mortgage lending field. Consumer credit was the main activity of sales and consumer finance companies, but life insurance companies, credit unions, retailers and utility companies were also involved.

Banks were permitted to enter both these fields because it was considered to be in the public interest. The pressure to extend mortgage power to banks came from politicians because the market for financing single-family homes in Canada was not being adequately served.

The main danger in allowing trust companies to combine trust

and commercial lending functions is that there are inherent conflicts of interest which arise when the same entity acts as banker to a corporation and manages a portfolio which is entitled to hold the same corporation's securities. If the financial health of the corporation deteriorates, the lender will not be able to act simultaneously in the best interests of both its depositors and the beneficiaries of the trust. This is true by definition since the depositors and trust beneficiaries will represent competing interests in the corporation.

Such a conflict does not arise when a trust company undertakes consumer lending. Therefore, we see no reason to deny trust companies general consumer lending powers, outside of any basket clause constraint.

Whether the trust-commercial lending conflict can be eliminated by means other than a separation of these activities is one of the questions currently being examined by an advisory committee established last December by the federal Minister of State for Finance. As you are probably aware, an Ontario trust company is represented on that committee.

The minister has also announced that he will seek a federal-provincial review of the four pillars. We consider federal-provincial agreement on this question to be of paramount importance and urge this committee not to arrive at firm conclusions about the intermingling of trust and commercial lending activities until these reviews have taken place.

Whichever way the four pillars evolve, the concept of a level playing field should apply. To the extent that institutions compete in each other's markets, the rules of the game should be the same for each. The trust industry in this country has consistently argued against this concept as it applies to deposit-taking.

This argument has taken the form of advocating that cash reserve requirements, which cost the banks about 0.5 per cent at current interest rates, should not apply to the trust industry but should continue to apply to the banks. Similarly, although the trust industry is currently seeking commercial lending powers for itself, it opposed extending trust powers to banks at the time of the last Bank Act revision. Presumably if trust companies were permitted to undertake commercial lending activities, there should be no objection to banks assuming fiduciary powers.

This leads me to the final part of my remarks. The level playing field and, indeed, a generally consistent regulatory framework depend critically on better federal-provincial co-operation than we now enjoy. It is ludicrous for this country to be operating with nine different trust and loan company acts which vary from each other in important respects.

I say nine and not 11, because two of the provinces do not have an act per se but, rather, allow trust companies to incorporate under their general business corporation statutes. This has effectively meant that companies wishing to escape the rigours of one province's legislation are often able to

incorporate under a statute of another province and then seek to become licensed elsewhere. I think you will have one of these institutions as a witness before you next week.

We sympathize with the resulting sense of frustration expressed by the authors of the white paper, especially as the vast majority of trust and loan business carried out in Ontario comes under another jurisdiction. The way to deal with that situation, however, is to seek uniformity rather than to enforce Ontario law on companies incorporated in another jurisdiction.

The comparative strictness of various provinces' requirements is ultimately a matter of judgement. Any action along the lines expressed in the white paper would invite similar action in other provinces. The end result would be duplication of regulation rather than improved regulation. In the case of the banks, whose loan company subsidiaries are incorporated federally, the burden would be especially heavy. These companies are already subject to some duplication in that they must comply with the standards of both the Bank Act and the federal Loan Companies Act.

Finally, we believe the time has come to judge the merits of systems of shared federal-provincial regulation, such as those which characterize the trust and insurance industries. As you know, banking under the Constitution Act is a federal responsibility. However, banking in this country has never been formally defined although one of the more commonly accepted definitions is the combination of commercial lending and the taking of deposits subject to third party payment orders.

10:30 a.m.

Part of our interest in being here today is that the legislation contemplated in the white paper would put trust companies squarely into that combination of activities. While it may not be realistic to have the banking aspects of trust and loan company activities come under federal jurisdiction and leave other aspects to the provinces, it is our hope that federal-provincial discussions will result in some lessening of the current jurisdictional overlap.

That concludes my opening remarks, Mr. Chairman. My colleagues and I look forward to your questions.

Mr. Chairman: Thank you, Mr. MacIntosh. Mr. Cassidy, we will begin with you.

Mr. Cassidy: Mr. MacIntosh, I asked to speak first in view of the link between your organization and my party over the last few days as a consequence of your speech to one of the service clubs a few days ago.

Mr. Breithaupt: I presume you mean misery loves company.

Mr. Cassidy: You seem to be unaware of this.

Mr. T. P. Reid: I did not realize the industry was in such bad shape.

Mr. Renwick: I also feel a little isolated in my party.

Mr. Cassidy: However, prior to your making the speech last week, we had made a number of comments in this committee which were very similar, both in respect of the ownership issue and also in respect of what you saw as excessive regulations that have been put into the act as a substitute for an ownership rule.

I wonder if you or one of your colleagues could perhaps give one or two examples of the self-dealing situation. You say in the brief that that is, in fact, a major factor, both in the United States and Canada, in both banks and trust companies. This is not something peculiar to Ontario but something fairly general--is that right?

Mr. MacIntosh: It is certainly not confined to Ontario. I will give you a kind of general self-dealing situation which would arise. If a trust company owner has an interest in, we will say, a real estate development independent of the trust company, he would be in a position to mortgage it out to the trust company on terms that are not market terms. He could give himself a break on the rate.

Do you want to have the regulator go in and look at every commercial mortgage loan that is made in the province to find out whether or not it was at a going market rate? The owner would argue that it was at a market rate. You would have to get into a niggling argument about whether it was or was not. Not just the rate, but all the terms of the mortgage deal could be favourable to the owner in his other capacity as the owner of the real estate development, we will say the mortgagee.

Mr. Cassidy: The self-dealing of the trust companies also involved overvaluation of properties for mortgage purposes. If Bank Act regulations had applied to many of the deals that have come into question, would they have been permissible, or would they simply have been knocked out before they were even made?

Mr. MacIntosh: They would never have occurred.

Mr. Cassidy: Can you explain a bit more about why that would be the case?

Mr. MacIntosh: Because there would not be any owner who had a reason to self-deal, because the largest single shareholding in a chartered bank in Canada, in the big banks, would be three or four per cent at the most and those would be pension fund holdings. The banks are very broadly owned and there is no person in a position to say, "I am going to overvalue a real estate property, and I am going to lend 200 per cent of the value of the property to another company which I have."

That is the situation which brought us to this table and you are not dealing with the route the white paper proposes to take; you are dealing with it by a very circuitous route. You are trying to put the registrar in a position of pawing through the accounts of every single transaction that goes on. How many people are you going to employ to paw through the records of every trust and loan

company to find out if there is self-dealing between the owner and the other parties? It is impossible. It is not a realistic solution at all.

Mr. Cassidy: You have changed your view from the brief you made to the federal people a year or two ago. At that time I believe you supported the concept that there should be limitation on ownership but only on the larger trust companies. I am not sure if you took the billion-dollar-asset figure as the starting point or whether you chose some other figure at that time.

Mr. MacIntosh: We had in mind a number of trust companies with very special private family arrangements or ethnic groups, very small groups, which do not take deposits from the public or deal with the public. We had that in mind. In the light of what has happened since our brief to the federal government, we have seen that relatively smaller trust companies could possibly be problems as well, so we have broadened our view.

Mr. Cassidy: I understand that from your brief. The argument is made that there may be some special circumstances with respect to the creation of new trust companies that would justify more concentrated ownership at the very beginning.

It is argued, for example, that the vicissitudes of startup may need a leading shareholder who can organize the troops or who can provide capital in case of special difficulties and so on. I am not sure whether I am sympathetic to that or not, but I would just like to know whether you think some exception should be allowed there or whether the rule should be a steadfast one in circumstances where a trust company is taking deposits from the public.

Mr. MacIntosh: We would say there should be allowance for the closely held at the beginning, because one of our own members is a schedule B Canadian bank. There are two kinds of schedule B banks. One is closely held, 100 per cent owned by a foreign bank. A Canadian schedule B bank is one which can be very closely held at first, but under the act is required over a period of 10 years to divest itself down to a 10 per cent level. That is meant to cover the creation of a new company; to get it on its feet with founding shareholders. We would agree.

Mr. Cassidy: Under those circumstances, is a schedule B Canadian bank subject to some special degree of regulation or of oversight?

Mr. MacIntosh: It is subject to a difference on leverage. I believe it is confined to 20 times capital on its assets.

Mr. A. L. Reid: As long as there is more than a 10 per cent shareholder, it is confined to a 20-to-1 capital-to-domestic-asset ratio.

Mr. Cassidy: Where you can go up to 30 per cent, 30 times--

Mr. A. L. Reid: We are regulated in that sense by the inspector general.

Mr. Cassidy: What kind of rates do you work to for the five big banks?

Mr. MacIntosh: It is now an ad hoc. Some general guidelines applying to all banks were issued in March by the inspector general. Within that framework, he negotiates with each bank in view of their risk asset structure and so forth. In fact, right now I might record here that the capital asset ratios of the big banks are in some cases lower than those of trust companies. Some of the trust company spokesmen who are trying to maintain the banks are much more levered than trust companies are quite wrong. I can show you material here, if you wish, which contradicts that.

Mr. Cassidy: I just want to have a number. For example, what is the current capital asset ratio or the current limit from the inspector general for the Toronto Dominion Bank?

Mr. Korthals: He has not imposed one on us. I think we are running 17 to 18 times.

Mr. Cassidy: I see.

Mr. Korthals: The question is more complex than just ownership. You have to also remember that it involves deposit insurance and deposit brokering. With deposit insurance at the \$60,000 or \$120,000 level for joint accounts, there is basically no risk differentiation in the market between the deposits of varying institutions.

Today, an individual can, with a modest amount of capital, leverage 20- or 25-fold with virtually a government guarantee. When you add to that the mortgage brokers, or the deposit brokers who go into communities and actually promote that at interest differentials, the market cannot make the distinction any more. That is where the conflicts start dramatically for closely held financial intermediaries.

10:40 a.m.

If you are a very large intermediary, such as the bank, and you operate not only in this home market but around the world, you have all kinds of other-- Deposit insurance does not really safeguard a big institution because we have a lot of wholesale deposits. They could be in Singapore or Hong Kong, Tokyo, Frankfurt, London, New York or Chicago. We are rated by Standard and Poor's Corp. and Moody's Investors Service Inc., the international banking group in London. You have to depend on your credit worthiness as being upheld by your earnings and by your capital and by the provisions you have against your loans.

It goes way beyond the inspector general of banking. You really have a complete market discipline on you. When we had stronger inflation in the 1970s, we had relatively low loan losses. It was not a very risky business because if you did make a mistake, inflation eventually kind of helped you along. You could

allow your capital asset ratios to run down; in the 1980s, you cannot.

You will see the major players in the industry in Canada and the major players around the world all working at remaining competitive in their ability to attract liabilities. It is an entirely different discipline.

Mr. Cassidy: What you are telling me then is something different as well, because you really were responding to a second question. Because a substantial portion of the big banks' deposits are offshore and are not insured and are in a competitive situation, and because of bond ratings and investor ratings and those kinds of things, as a consequence you are saying the widely held bank comes under scrutiny from a number of different and somewhat independent sources. Is that correct?

Mr. Korthals: That is correct.

Mr. Cassidy: Whereas a trust company basically gets monopoly money, in the hands of a single owner or a small group, this money can be played around with without a lot of outside scrutiny taking place.

Mr. Korthals: You really only have the regulator left as the one who can control it.

Mr. Cassidy: In view of the failure of regulation in this province now, do you think it would be a wise move to basically put more into the same pot by seeking to strengthen regulation when it has evidently failed in the past?

Mr. Korthals: You would want to do a lot of research in answering that question. In my view, it is extremely difficult to regulate. In fact, even in a large bank, it is awfully hard to control what you are doing throughout the country. If anybody could really regulate, you would think it should be management of the bank itself. But you can ask most bankers, and you will have branches or regions where it suddenly goes wrong. It is damned hard to stay on top of credit or asset quality when you decentralize or you delegate. This is, in essence, what you do when you have a regulator trying to judge asset quality when he is not even part of the management of the company.

You might be interested in talking to the auditors of banks who come in and audit large loans, because that is one of their requirements and it is judgemental. It is very time-consuming. On large loans you can do it because there are relatively few of them, but it is absolutely impossible to try to do it in the \$200,000 loan range.

Mr. Cassidy: I will just ask one other question and then perhaps come back in the second round when other members have had a chance. The banks are subjected to reporting requirements which involve public disclosure. As you pointed out, the registrar was getting his report out so tardily that it was of no use, and the response was either to scrap it or else get it out on time.

What are the time delays on the quarterly reports made public by the banks? That is, how long after the end of each quarter do you take before those reports are made available to the public?

Mr. MacIntosh: If I could comment on that, I have in front of me a sheaf of the published year-end October 31, 1983, statements of every bank in Canada--all 71, including the big banks. The annual report--that is an income statement, a balance sheet, a complete audited statement--has to be published 65 days after the end of the fiscal year. I could not bring you today the information for the trust companies yet, because most of them have December 31, 1983, as a year-end and the big ones tend to publish quarterly reports fairly promptly, quarterly.

The banks, in addition, publish schedule P to the Minister of Finance in the Canada Gazette about six weeks after their monthly figures. Assets and liabilities are broken down in some detail. There are 20 or 25 headings of assets and liabilities published about six weeks after the month-end.

In addition, the banks consolidate. We have here today the statistics for the whole Canadian banking system, consolidated, for a week ago Wednesday. That is a big job, as you can imagine, for a bank with 1,000 or 2,000 branches. Nevertheless, we consolidate weekly. We publish 10 days after the Wednesday for the whole industry, so you can look at the mortgage holdings of the chartered banks in Canada, as of a week ago Wednesday.

I have been travelling around the provinces talking to provincial ministers about housing policy, and they say: "We want to know what is going on with mortgages in our province. We want to know what is happening to the level of defaults, etc."

They get our statistics and what do they have from the province? Nothing at all. You do not have any data showing you anything about the position of the trust and loan industry. The best you can get is a consolidation for last September 30. It is even worse than that for the credit unions. The best you have are estimates for last June 30, and the last published figures, I think, go back to 1981.

Those institutions come under your control and we ask, "Why cannot all the provinces have a level of disclosure of their numbers as fast as ours?"

We also publish quarterly figures. Banks must publish these asset and liability figures quarterly. I forget the number of days after the end of the quarter.

Mr. Reid: Quarterly figures are 45 days.

Mr. MacIntosh: Forty-five days.

Mr. Cassidy: The monthly and quarterly figures for individual banks must be published within approximately 45 days.

Mr. Reid: That is right.

Mr. Cassidy: The annual audited statements must be out within 65 days.

Mr. MacIntosh: Yes.

Mr. Cassidy: Those deadlines are, in fact, adhered to?

Mr. MacIntosh: Yes.

Mr. Cassidy: I am sure it is not easy to meet those deadlines. Is meeting those deadlines a matter of extreme extra cost or just making sure you are organized?

Mr. Korthals: We actually could easily exceed those deadlines today with automation. We can get our year-end audited statement out in 27 days, but we would have to work Saturdays and Sundays to do that. The accounting staff cannot do it in a five-day week.

Mr. Cassidy: You are not bringing the rest of the bank to a halt, in other words?

Mr. Korthals: No.

Mr. T. P. Reid: Are there any sanctions if you do not have this information out on time?

Mr. Korthals: I have no idea.

Mr. Cassidy: I will desist now and ask questions later.

Mr. Chairman: Thank you. I have a list. Maybe we can get back to you a little later.

Mr. T. P. Reid: What happens?

Mr. Reid: The bank is guilty under section 217a of the Bank Act. If failing to comply, you are guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000.

Mr. MacIntosh: I might say the problem does not arise for banks because banks have been meeting these kinds of time targets for a very long time. Some new startup banks were a little confused, as you can appreciate, having just started. In some cases, they ran a few days or weeks over and the inspector general did not come down on them because they were just starting up. Next year they will be all right.

Basically, those figures in front of you are for 71 banks in Canada. The point is, they are published. They have to be published in the newspaper and put on the record. This white paper does not talk about publication at all. It talks about disclosure as though disclosing to the registrar were disclosure. That is not disclosure.

Mr. Cassidy: I agree.

10:50 a.m.

Mr. T. P. Reid: Mr. MacIntosh, one of the arguments we have heard in terms of ownership is that in a closely held trust company, the management will be more responsive and more responsible to the one or two or three owners. The argument is that if you get management in on a broadly based ownership, then management becomes entrenched and is not responsible and is not accountable to anybody. How do you respond to that?

Mr. MacIntosh: Perhaps I could have a whirl at it and maybe Mr. Korthalf is in a better position to fill it out. The truth of the matter is, the problems we have had in this country are not from broadly held companies. They are from closely held companies. That is a matter of record. When trust industry people tell you that broadly held companies are not responsible, look at the facts. The truth is, the troubles are all in closely held companies.

Mr. T. P. Reid: That may well be, but that does not answer the question. Let me put it to you another way. What happened to the management at the Royal Bank and the Canadian Imperial Bank of Commerce with their bad loans to countries in South America? Did any heads roll, or is management still there, operating as it always has?

I have seen no press reports of anyone being fired or demoted.

Mr. MacIntosh: Those kind of things do not get into the paper, but they do happen. The fact is, management answers to its board. If the board is sufficiently dissatisfied with the situation, it will make a change. Indeed, in one Canadian bank which was related to the trust company affairs in Ontario last year, a change was made instantly. I have the press release right here. A top officer was changed right away.

Mr. Cassidy: That was the Canadian Commercial Bank, was it not?

Mr. MacIntosh: Yes.

Mr. Cassidy: Can you give us the details?

Mr. MacIntosh: I have the press release here, if you can give me a moment to find it.

Mr. Cassidy: Perhaps you can leave it with the clerk and we will have a look at it.

Mr. MacIntosh: Yes. Incidentally, if I could just add a word, yesterday the bank concerned was improperly identified. It was the Canadian Commercial Bank, not the Continental Bank, as mistakenly reported. I just wanted to put the record straight.

Mr. T. P. Reid: Did I understand the deputy minister to say yesterday he hoped to have legislation this session dealing with the loan and trust companies?

Mr. Crosbie: Yes, he did, at least in first reading form so that it would be available over the summer.

Mr. T. P. Reid: The Canadian Bankers' Association brief mentions this advisory committee and what is going on at the federal level. I presume we are part of that, are we?

Mr. Crosbie: Let us put it this way. The ministry has not been invited to participate.

Mr. T. P. Reid: How do you answer Mr. MacIntosh's comment that in his view it would be premature to do anything about this situation until those federal people have reported?

Mr. Crosbie: I think one has to look at the realities of the reporting timetable for the federal government. You are probably as good a judge at this as I am, perhaps better. When would you reasonably expect federal legislation?

Mr. T. P. Reid: Not in my lifetime.

Mr. Crosbie: You have answered it much better than I could.

Mr. Cassidy: It takes a Liberal to know a Liberal.

Mr. T. P. Reid: I expect there may be a change in government.

Interjections.

Mr. T. P. Reid: Could I pursue that with Mr. Thompson? In terms of the uniformity of legislation and the problem of trust companies being chartered in another province and then moving into Ontario, having been established elsewhere, how much of a problem is this? How many cases are there? Do they tend to set up in the easiest jurisdiction and then come to you and say they are chartered in, say, Prince Edward Island or Alberta?

Mr. Thompson: I think yesterday we had an example of a company chartered in Prince Edward Island which does not have a loan or trust corporations act but is endeavouring to get into Ontario and has gone the route of trying to open an office here.

Our own standards are that a company wishing to do so has to meet our minimum requirements. We would want at the very bare minimum a three-year operating review of that company to indicate that it is both solvent and in a profitable position and does have the capacity to enter into the Ontario market. There are not a great number of them--I would think three or four--that are extraprovincial in the sense that they are incorporated in another province. Alberta has a relatively sophisticated trust companies act, but the vast majority of them vary in degree. The standard we

have tried to apply consistently is that if you are doing business in Ontario, then we want you to comply in all respects with the Loan and Trust Corporations Act of Ontario.

The examination is a problem, and we negotiate with the company to say we will do the examination through our own people. This is a costly enterprise, and we require the extraprovincial company to pay the cost of that, so we are really doing our own review of that company's activities.

There is in very tentative stages a meeting held once a year in an effort to form an association of provincial trust company regulators with the federal presence there as well.

Mr. T. P. Reid: I take it you have not been overly successful in bringing any uniformity of approach or legislation to these matters?

Mr. Thompson: No. It has started to some degree, but it is not nearly at the same level as in insurance where there is basically a uniform insurance act that all provinces have agreed to adopt. However, that is something which I think has been worked on for 67 or 68 years.

Mr. Crosbie: Mr. Reid, if I could elaborate further on that question of uniformity of legislation, I think the bankers' association brief draws attention to a very critical aspect of regulation in Canada, and that is the very real difficulty with divided jurisdiction, not only federal-provincial but the other provinces.

I know there are at least three and possibly four provinces right now, other than Ontario, that are anxious to get on with revisions of their loan and trust legislation. A number of them have indicated to us they are holding off until Ontario goes through the process. In a number of these areas, Ontario has taken the lead in legislation. The other jurisdictions which do not have the resources to do the research or develop the legislation have tended to wait for Ontario legislation and then adopt it.

We were talking somewhat jocularly a few moments ago about the situation at the federal level. I could not agree more that it would be ideal if the provincial and federal legislation went ahead hand in hand, if we wound up with legislation which was entirely compatible and if we were able to resolve a number of the problems that confront not only the regulators, but the corporations having to act or operate within the legislative schemes that are devised. I think from a practical point of view that is going to be an extremely lengthy process. Our position in Ontario with this exercise has been to do the best job we can, recognizing the very real difficulties that are created when one province moves ahead.

As Mr. Thompson has indicated, in recent years there has been a much stronger liaison amongst the provinces on matters of this kind, and I am more hopeful now that we can get a closer agreement on the legislation in the various provinces.

11 a.m.

Mr. T. P. Reid: Have other provinces had problems like Astra/Re-Mor, Greymac, etc.?

Mr. Crosbie: Oh, yes. Alberta is going through a similar series of trust company, mortgage company and even insurance company problems--I do not know if there are any insurance companies in Alberta--but I think there have been three mortgage or trust companies in Alberta that have run into financial difficulties.

Of course, the federal government has had the same problem. Seaway Mortgage, Greymac Mortgage and Fidelity Trust are federally regulated and incorporated companies. I think the problems have arisen in the jurisdictions where the companies exist. It is not by any means an exclusively Ontario problem.

Mr. T. P. Reid: Mr. MacIntosh, this is one of my favourite questions. Were you and any of the people in the banking world aware of what was going on with the three companies in Ontario that we are not allowed to mention here?

Mr. MacIntosh: No, I was not. I think it is important to recognize that I deal with industry-wide questions and I would not be aware of the business transactions of any of our institutions; so I would not know that and I did not.

Mr. MacQuarrie: Mr. Chairman, I would like to follow up on one of Mr. Reid's initial questions, and that is the question of ownership, about which the auditors' association seems to be concerned.

Questions of corporate control have really always particularly interested me. We see closely held corporations on the one hand and then we see companies with an extremely widely held share base. In some instances we find that in those companies with an extremely widely held share base the minority of shareholdings, in fact, control the corporation.

Mr. MacIntosh, you indicated that the largest shareholding in Canadian banks was something in the order of three per cent.

Mr. MacIntosh: Yes.

Mr. MacQuarrie: Does that group have a nominee on the board of directors of the bank in question?

Mr. MacIntosh: No. The largest single shareholder of a Canadian bank that I know of--leaving aside a couple, as I mentioned earlier, that were closely held for known reasons--would be the Quebec pension plan, which is the equivalent of the Canada pension plan. In Quebec, as you know, they went to the QPP, and the QPP would be a large shareholder in all big banks, perhaps the largest. But they do not have a seat on any bank board that I know of--not in their capacity as QPP. Some individual might happen to have some overlapping interests, but they do not.

Mr. MacQuarrie: In companies such as General Motors and the like, it is really a minority of shares exercising control; the same is true of some of the other corporate giants.

Let us look just a little bit further at the shareholder level. At the annual meetings of the banks, approximately what proportion of shareholders would be personally present or represented by proxy?

Mr. MacIntosh: Personally present? A tiny proportion normally.

Mr. MacQuarrie: Unless they had an axe to grind about lending to South Africa or something like that.

Mr. MacIntosh: Yes.

Mr. MacQuarrie: What about proxies?

Mr. MacIntosh: By proxy? Mr. Korthals would be better able to answer that. I would think it could often be 60 or 70 per cent.

Mr. Korthals: About two thirds.

Mr. MacQuarrie: About two thirds by proxy. So essentially a third of the shareholders are not too concerned about--

Mr. Korthals: Some institutions do not send in proxies. It is really better among those that will send in a proxy; it is higher.

Mr. MacQuarrie: Do you find that boards of directors remain comparatively static over a long period of time?

Mr. MacIntosh: There is an age limit now of 70, I think, applied in the Bank Act, so it has changed quite a lot compared to what it used to be 20 or 30 years ago, and there is a good deal more turnover for the age reason.

Mr. MacQuarrie: Do you think with the widely held surveys you have you have developed skilled management and that banks really make better investment decisions than trust companies?

Mr. MacIntosh: There is a point that should be made clear about the widely held companies; they are subject to market constraint. They simply cannot go off and do what they would like to do because the market will put a hand on them. Their capital ratio, liquidity ratio, and rate of earnings are very closely scrutinized by a very professional collection of financial analysts in this country.

Every single quarter, when the figures come out they are closely looked at. They publish their material widely to shareholders who look at it and the shareholders can vote with their feet. They can go out and sell and put the stocks down, making it difficult for them to grow and making it difficult for

them to raise further equity capital. The process is a market process with a broadly held company.

If you want to talk about a company where the management is not subject either to the market or to any constraint, you should look at a mutual insurance company. One of them, Manufacturers Life Insurance Co., owns 30 per cent of Canada Trust. As you know, Canada Trust has not agreed to allow them to vote the stock because they are a mutual company and they cannot prove it is a Canadian resident company because they have policyholders in the United States. What are they going to do? Are they going to hire Maple Leaf Gardens for a policyholders' meeting?

In my view, the management is not answerable to any discipline, either of a board or of the marketplace. That company now has 30 per cent of Canada Trust, which incidentally is not a member of the Trust Companies Association of Canada for reasons it would be useful for you to ask them, except I have noticed that they are not going to appear here. Indeed, there are several companies who have been having a whole lot to say about this subject at conferences, but have not come before you here.

Mr. MacQuarrie: You indicate that the marketplace exercises a considerable degree of shareholder control in a sense?

Mr. MacIntosh: Yes.

Mr. MacQuarrie: There was a group in from the co-operative movement, Co-operative Trust Co. of Canada, in which each member of a credit union or a co-operative had a vote. You could not have a more widely based sort of operation and yet, I get the feeling once the directors were sort of in, they were in. In your case there is an automatic turnover, I guess it is at age 70.

Getting back to my question, subject to that retirement provision, do bank boards remain fairly static in terms of personnel?

Interjection: In comparison with the politburo.

Mr. MacIntosh: You do not even get on the politburo until you are 70.

Mr. MacQuarrie: Over 70. Well over 70.

Mr. Cassidy: John Turner is--

Interjections.

11:10 a.m.

Mr. Korthals: There are no rules. It depends on the board and the management of the institution and how effectively the board executes its role and governs. I think it will vary considerably. In our case we probably have about a five per cent turnover rate, so in five years we turn over about a quarter of the board, not only because of the retirement age, but when people

become less active in their own business they resign as well because they contribute less, or feel they will contribute less in the future.

So there is a fear. Of course, if you stagger your board well in age and representation, you will get a normal amount of turnover. I think it is not so easy to be an effective bank director and I guess it would take most of two or three years to get comfortable with it, so you would not want to have tremendous turnover on your board.

On the question of whether you make better loans or risk selection, years ago we were very big lenders in Iran. We did not foresee the overthrow of the shah, especially not by a religious leader who had very different values.

Mr. MacQuarrie: Exactly like Latin America.

Mr. Korthals: Well, we did not foresee that. Then Iran was a disaster, but two years later we were paid off in full. We would not have predicted the disaster and we would not have predicted the payoff.

At one time we took a lot of criticism because we were exposed to Chrysler. Today it looks as if it was a good thing that we were lending to Chrysler; at least we were paid all that time. The year or two before Harvester took the strike and ended up down, we would never have predicted what could have become of Harvester.

It was said here that Latin American debt was of very poor quality. It is certainly not of the same quality it was three years ago, but I think the governments and the governors of the central banks in those countries would not accept the statement that they had no creditworthiness left.

In fact, what has happened to those countries is a combination of factors. They borrowed more money than perhaps they should have in order to get faster growth. I think it was in the interest of the industrial nations of the world at least to give them a chance to be industrialized and not hold them back forever. Then a combination of very low commodity prices, very high interest rates as a result, maybe, of the United States deficit, and a rising US dollar has really made it difficult for those countries to operate.

I know they are not going to pay back those loans except by reborrowing, but in that sense they are absolutely no different from our federal government, the Ontario government or Ontario Hydro. I own Hydro bonds and I expect to be repaid because Hydro will on that day borrow again, so I do not expect them ever to truly repay me in that sense.

I think it would be wrong to have capital transfers from the Latin American nations to the industrial nations. I hope, though, they will be able to pay their interest. Their current account balances are three times as good now as they were a year ago. Some days they may have difficulty paying interest.

A lot of borrowers we have over the years, year in year out, have difficulty. Everybody thinks mortgage loans are of terrific quality, but if you go to the Netherlands and talk to lenders there, they will say, "Mortgage lending is the worst thing we ever got into." They are having terrible write-offs on mortgage loans in the Netherlands. We are having trouble with our mortgage portfolio in Alberta.

Mr. MacQuarrie: Farmers in trouble?

Mr. Korthals: We have some farmers in trouble, too, but most of those were speculators in land, not farmers.

These things ebb and flow. The strength of an institution is the diversity in its portfolio and in where it places its loans geographically.

Mr. MacQuarrie: There is no question that you people represent, individually and collectively, some of the major financial institutions on an international base and I can certainly appreciate your having the odd bit of trouble here and there.

Mr. T. P. Reid: If everybody would (inaudible) in trouble. Even the chairman and president of a bank, at least, would feel that odd bit. He probably has many sleepless nights over it.

Mr. MacQuarrie: Well, let us not go overboard on it.

Miss Sinclair: May I make just one point? I think it is misguided, though, to link the present problems with the banks' loan portfolios to any ownership considerations whatsoever. I do not think you would find the closely held banks in this world--take the French banking system, which is nationalized--to have been any less erroneous in their lending decisions than the Canadian banks. The ownership issue really is not relevant to past lending decisions.

Mr. MacQuarrie: My line of questioning was really directed mainly to the question of ownership, whether we were pursuing a myth or a fantasy in pursuing this wide-held basis of ownership when from what I know of other corporations minority shareholders within that wide base can exercise considerable control. I was wondering whether that was applicable to the banks.

Mr. MacIntosh: Could I just add one point? There is a difference between a closely held industrial corporation and an institution which is using other people's money. That is what a trust company is.

The trust companies are depositing institutions, as we are. They claim they are; they want to be that. They are members of the Canadian Payments Association and they are using other people's money. If the owner can take other people's money for his own purposes, that is different from a closely held industrial

corporation. That is our concern, that he can use the money of the depositors for his purposes.

Mr. Gillies: Just picking up on that point, Mr. MacIntosh, I have to tell you I am completely unconvinced that closely held ownership as opposed to the widely held ownership of the banks is the key issue here. I am unconvinced--to pick up on something you said--that the reason there have been regulatory failures in the trust industry as opposed to the banking industry is because of the widely held ownership as opposed to closely held ownership.

I would suggest to you, and I would ask you to respond to this--and I know you have been through this with spokesmen from the trust industry before--one of the key factors is some of the large and very poor investments made by our banks in Canada which have been subject to government bailouts. Where would the Canadian Imperial Bank of Commerce be if Dome Petroleum had not been subject to a government bailout? Or if Massey-Ferguson had not been helped out by both the federal and provincial governments?

I am not saying that should not have been the case. There were two primary beneficiaries in the Massey bailout and one of them was my riding, so I am quite happy about it. However, I would suggest to you that the Canadian Imperial Bank of Commerce had over \$600 million sitting in Massey-Ferguson. Would they not have been in trouble? Could they not even have been on the verge of at least a partial regulatory failure if the Canadian and Ontario taxpayers had not stepped into that situation?

I know you were on a panel about three weeks ago with Hal Jackman and I would ask you to respond to some of these points. He has stated the Canadian banks have had the benefit of repeated government bailouts in order to prevent regulatory failure or embarrassment. He has made the point that the clients of chartered banks are paying high interest rates to also cover some of those bad debts. I would ask you to respond to those things.

Mr. MacIntosh: Shall we take the last point first?

Mr. Gillies: Please.

Mr. MacIntosh: Mr. Jackman said the spread in rates is wide so the banks can make the kinds of earnings that are necessary to cover foreign loan laws. I think that is what you are talking about.

I will say this. If that is so, why does not the Victoria and Grey Trust get inside the banks, raise the rates they pay in deposits, charge lower rates on loans and take the whole market? They could do that. There is nothing to prevent them from doing that. They do not. Why do you not get them here and ask them?

The spreads in the marketplace are determined by market conditions. If anybody wants to go inside the banks, they are perfectly free to do so. There are all kinds of deposit takers in Canada.

11:20 a.m.

Take the credit unions; they could get inside the banks if they wanted. They do not. Why? Because the yield spreads are not the sort of thing that Mr. Jackman has been talking to you about.

If you take a daily interest deposit at six per cent and compare it to a five-year mortgage loan at 12.5 per cent, that is practically a 6.5 per cent difference. That is what he is talking about, a wide spread between a one-day deposit and a five-year loan. Of course it is wide. If you make a five-year deposit against a five-year loan, the spread is only about 1.25 per cent.

You can pick up this morning's newspaper and take a look at what banks are paying for five-year registered retirement savings plan money. I think I could show you 10.5, 11, 11.25 per cent in the paper right now. The mortgage loan rate at the banks is 12.5 per cent; the mortgage loan rate of the Victoria and Grey Trust Co. is also 12.5 per cent. Why does he not cut the rates, then, if he does not like the spread? He can do that, you know.

As to the loan loss situation, as Miss Sinclair just said, the loan judgements that have been used in some cases are not relevant to the issue of self-dealing. You say you are not convinced. Well, I do not know what it takes to convince you, because the problems you have had in Ontario all arose from self-dealing.

There are \$600 million in assets sitting in the Canada Deposit Insurance Corp. basket cases that arose out of self-dealing, not out of judgement about loans; that was not the issue. It was not that they were lending to Massey, Chrysler or something; self-dealing was the issue and you can always have self-dealing when you have closely held ownership. That is what we are saying.

Mr. Gillies: Were the self-dealing issues we are examining here not in fact examples of bad judgement in a rather similar fashion?

Mr. MacIntosh: Oh, well, if you just think they were bad judgement--

Mr. Gillies: I am not saying there was not more to it than that.

Let me come at it from this point of view--

Mr. MacIntosh: Excuse me, sir. That is the point. There is more to it than that. It is not just a question of lending judgement; it is a question of what you are doing with the money for your own interests over theirs. That is the issue, and that you cannot do in a broadly held company.

That is the issue. If you talk about the judgement on loans, sure, the banks are sorry they made some of the loans they made. We will all tell you that. Everybody got carried away. As Mr. Korthals said, inflation influenced everybody's view, so they got

to feeling, "It is not that tough to get out of a bad situation." The world changes, but at the time those were judgement mistakes.

You say the taxpayer bailed out Chrysler. Now the situation is back on its feet here and in the States, and probably it was right in that case for government to step in in a massive way. But that does not address the issue you are dealing with of self-dealing in financial institutions.

Mr. Gillies: I am not disputing that some good has already come and will come from some of these public investments. I guess what I am saying is this. I have a feeling that if in the case, let us say, of Massey, Chrysler, Dome and some of these other things the government agencies had not stepped in, there could well have been a committee of the federal Parliament sitting right now to look at what we had done wrong in our banking system that caused the problems with our chartered banks.

Again I do not dispute that there were other problems with the regulatory failures in the trust companies, quite apart from the breadth of ownership. But in those particular cases I wonder if we would be here if at some point an agency of government had stepped in with a loan guarantee to cover, let us say on the same proportion as Massey-Ferguson, about a third of the liability of the trust companies in some of the dealings they had had.

Mr. MacIntosh: Yes, you would be, because that is not the reason you are here. The reason you are here is not that certain trust companies are making excessively large loans to XYZ corporation; it is that a lot more than that was at stake. We do not need to go into it here, but it was a lot more than the lending policy.

Miss Sinclair: Mr. Gillies, I think if you go back to the analysts' reports, which came out a year or two ago, I guess, when public concern was at its height, there was a lot of examination of the banks' capital base in relation to some of those loan exposures, and I do not think you will find an analyst's report that questioned the viability of the industry in the absence of government involvement. Not a single analyst that I can recall questioned the viability of the industry in the absence of government involvement.

Mr. MacIntosh: Moreover, remember that the problem of loans that have been in some difficulty in, say, Latin America was not confined to the Canadian banks; it was true also of American banks, British banks, German banks, Swiss banks--you name it--and they all had regulatory authorities, every one of them. The federal reserve did, and the New York banks are in as a percentage of their equity more heavily than the Canadian banks are. The Americans have the same situation. The federal reserve does not feel and the American analysts and the American financial markets do not say the big New York banks are in danger of getting into the basket-case situation you are dealing with here.

Mr. Gillies: One cannot dispute, though, and I think the spokesmen for the trust industry can certainly say with some

justification, from their point of view anyway, that the banking industry has had the advantage when it runs into problems from time to time of drawing on various government programs to help it out of its problems.

I will ask you another question. You have partly reassured me on this one.

Mr. Cassidy: Excuse me, Mr. Chairman, but one of the reasons depositors did not lose was government programs to protect depositors, the increase in deposit insurance to \$60,000 and the bailout by the Canada Deposit Insurance Corp. We are now looking at a \$300 million to \$600 million loss because of what Mr. MacIntosh describes as basket cases. Mr. MacIntosh might be able to tell us the extent to date of losses in those areas cited by Mr. Gillies where there has been government intervention to protect some of those risky loans.

Mr. MacIntosh: None. There have been no losses to shareholders or creditors and nothing has gone into the CDIC.

Mr. Cassidy: Okay.

Mr. Gillies: The difference, as I see it, Michael, is that in the case of the banks we are talking about public investment to an ongoing corporate entity that has not resulted in any change in its ownership or in its policies. The government intervention in the trust industry was at the crisis point when ownerships were changing and companies were going belly up. I think it is a rather significant difference.

Mr. T. P. Reid: Would you describe the actions of the provincial government as draconian in that sense?

Mr. Gillies: No, not at all.

Mr. T. P. Reid: I just wondered.

Mr. Gillies: I would not because that action resulted in many people being spared significant--

Mr. T. P. Reid: Are you suggesting the Ontario government should have bailed out Greymac, Seaway and Crown?

Mr. J. A. Taylor: We are getting into a debate.

Mr. Chairman: Can we get back to the subject, please?

Mr. J. A. Taylor: What is your next question?

Mr. T. P. Reid: I was following along the line of argument, which was tortuous at best.

Mr. Gillies: My other question you addressed partly in response to Mr. Cassidy. That is about the point at which a company would have to become widely held. In your suggestions regarding the trust industry, I wonder if you could elaborate on that.

Again, if there were a regulatory failure, a problem I can see for the government, the registrar or whoever else is having to try to find a new ownership situation for a company in trouble might be, if we had a 10 per cent rule, finding the proper consortium or group of people to get it back on the rails. Are you suggesting it could start out in a fairly narrow situation and then broaden its base within a specified period of time?

Mr. MacIntosh: Yes, if I understand you. We are suggesting you have a 10-year period to spread ownership, divest down. As I mentioned, the banks had four years to divest out of some trust company ownerships that were historic after the Bank Act of 1967. It could be done in the marketplace. As we showed, the numbers are not so large. If you took the combined equity of all of them put together, \$2 billion to \$3 billion, according to the trust industry's own statement, you are talking about a fraction of the shares that trade in a year.

Mr. Gillies: So you are talking of a phase-in period of 10 years.

Mr. Renwick: Mr. Chairman, I have been quite fascinated by the discussion. The brief itself raises some very profound questions, but unfortunately we have a very limited mandate in this committee. We do not have the opportunity to follow each of the issues you raised. I would love to take up time this morning debating almost every single point you have raised for clarification and other purposes.

Our mandate basically will be, and there is a bit of wishful thinking in this, that the new legislation will incorporate a number, if not all, of the recommendations the select committee made some years ago in 1975 related to loan and trust corporations, which the government was in default in not implementing. A second function is to comment on the proposals in the white paper leading up to legislation. We only have a limited time so I cannot go into as many areas as I would like to.

11:30 a.m.

I wanted to add my share of scepticism to this question of whether we would solve the kinds of problems we recently faced in Ontario in the trust business simply by a broad ownership rule. I do not want to get into comparison between banks and trust companies. I want to stay in the trust realm.

On the one hand, we had the fiasco and tragedy of Crown Trust, which was subject to a series of share transfers over a very short period of time and then the collapse of that company. On the other hand, we had the Royal Trust Co., which is not Ontario incorporated, but is licensed to do business here and is subject to the rules here, being subject to a takeover bid by Robert Campeau in that famous meeting which took place between him and Kenneth White with respect to that matter.

I have never been able to resolve in my mind whether the public interest would or would not have been served had Robert

Campeau been successful in his bid to take over that company. He was defeated basically because of the defensive manoeuvres of Mr. White with his close friends in the hierarchy of the banking and investment community. The results are not yet known. I think there is still a matter outstanding before the Ontario Securities Commission on that question.

If we were to follow the course you suggest, then it would make a company like Royal Trust impregnable to takeovers for all practical purposes. I contrast that with the question of the public interest and whether or not we are not pursuing, as Mr. MacQuarrie said, some kind of a chimera as a solution to a much more complex problem. I think a good case can be made that on occasion an organization benefits from a takeover operation, both from the point of view of service to the public and the competitive results which flow from it and different and more aggressive management.

On the other hand, I can well see the virtues of stability, continuity and so on which would tend to result if we go the 10 per cent rule, but I do not find it nearly as simple as you make it out to be, Mr. MacIntosh. Could you respond to my concern about that?

Mr. MacIntosh: I will try to, Mr. Renwick. You can go about it another way, and that is what the Ontario white paper proposes to do. It proposes to give the regulatory authority the power to do all kinds of things. It will even have to approve who is going to be the chief executive officer of the company. It can intervene in all sorts of circumstances. Is that the way you want to go about regulating the system in Ontario? That is a very interventionist approach.

Perhaps that is what you want. I would not have thought it would be what Ontario would want. I would not have thought the present government would want to use an interventionist approach to the solution of a problem. You say it is a chimera. It is not. The facts are on the table. You are here because of those facts. They are not an imaginative position that we have invented.

Last year there were 93 bank failures in the United States. Take a look at what caused those. The biggest one was a bank in the southern states where being closely held was exactly the issue. The principals were dealing with each other through their other vehicle companies. That was the issue and it went down in a big way. It was as big or bigger than Crown, and it went down for the same reason. Most American banks have failed for the same reason.

The 10 per cent was originally proposed in the 1965 act and it was really intended to head off foreign ownership. That is what happened. It started out to prevent the takeover of a Canadian bank or banks and, as an afterthought--

Mr. MacQuarrie: Were any of the banks in trouble before that rule came in?

Mr. MacIntosh: No.

Mr. MacQuarrie: Were they experiencing any difficulty in terms of ownership or successful functioning.

Mr. MacIntosh: No. They were broadly held even then except for the Mercantile Bank. That was the occasion of the circumstance when the City Bank bought the Mercantile from the Dutch. Other than that, the Canadian banks were broadly held.

Mr. MacQuarrie: And functioning well?

Mr. MacIntosh: And functioning well.

Then, as an afterthought, the government decided: "If we are going to do it for foreign owners, let us do it for all owners. We want these institutions broadly held because they are dealing with the depositors, with millions of people, and they should not be under the control of an individual who can divert funds."

All we are saying is, very simply, the same should apply to trust companies. They say they are deposit takers, as we are. The field should be level. It is not a chimera. I hope that is the answer.

Mr. Renwick: May I try to hone down the question a little bit? I think the record of this committee, in the short time we have been sitting, would indicate I have very serious reservations with respect to the overkill proposed by the white paper on regulatory matters. I am not a profound regulationist in the sense in which you responded to my question.

I mentioned the constraints under which we are operating. Many of us would be interested, if the time ever permitted, but we cannot deal with matters that are subject to continuing and ongoing police investigation. That is a self-imposed rule of this committee. We cannot deal with all the matters involved in civil litigation in the courts. Again, it is a self-imposed rule of the committee. We are not able to deal with those matters.

We can, however, deal with the very limited question you have proposed to us, that if we take this relatively simple step, we will be serving the public interest.

Mr. MacIntosh: That is our view.

Mr. Renwick: I understand that. You have made it very clear.

I am asking you in what way the public interest necessarily is served by a method which permits the major corporations engaged in the financial community in Canada, including insurance companies, to be self-perpetuating with respect to their management. I am not making a value judgement. I am asking, is that the sole and only road to fiscal and financial virtue in the country?

Mr. MacIntosh: I think you will note from our brief and my remarks we did not suggest that was the sole thing that had to be done in Ontario. That was not our position.

Mr. Renwick: I have listened very attentively to the responses you have made on this question to each of my colleagues and, with great respect, that has been a focal point of your presentation. I know you have made a broad range of other profound proposals that will have to be considered if there is ever to be a total look at the financial institutions of the country, but we are not in that position. With great respect, I say you have not answered the question as put by my colleagues the member for Rainy River (Mr. T. P. Reid), the member for Ottawa Centre (Mr. Cassidy) and the member for Brantford (Mr. Gillies).

Are you advocating to us that the financial institutions of this country should be structured in such a way that there is no known way for changing either the directorship of the companies or their senior management by the persons who are, at least in theory, the owners of those businesses?

Mr. MacIntosh: There is nothing in law that perpetuates the management of a bank.

11:40 a.m.

Mr. Renwick: There is nothing in law that perpetuates the management of a mutual insurance company, but the facts of life are that it is not possible in this world to take over a mutual insurance company with any ease or ability, except by someone with immense resources.

Mr. MacIntosh: No. Immense resources would not get you anywhere because a mutual insurance company has no shares to be bought, so I do not know what you mean.

Mr. Renwick: I am saying that one could, with sufficient resources, perhaps on proxy of the holders--Mr. MacIntosh, again, I do not want you to slide off on me--

Mr. MacIntosh: Your question is really very strange.

Mr. Renwick: We know a mutual insurance company is not a share company. We know at the time the limitations were placed on the insurance companies they ran for cover to become mutual companies to avoid takeovers. That is known. You understand that.

Are you saying to us that it is always and conclusively in the public interest that the trust companies be isolated from takeover possibilities in the way in which Royal Trust Co., without the limitation, isolated itself, but had it isolated itself under a broad ownership rule, it would have been even more impregnable? If you are saying to me that this best serves the public interest, then you have answered my question.

Mr. MacIntosh: You are trying to set up a question that you want answered. You cannot compare a publicly held shareholding corporation to a mutual life insurance company at all. I do not know why you are trying to. They are quite different things.

Mr. Renwick: Then let me admit the error of my ways and withdraw the remark about the insurance company and talk about Royal Trust Co. as related to Crown Trust. Are you saying that we as members of the assembly here are going to be in a position where Mr. Campeau will never be successful?

Mr. MacIntosh: Yes. If you follow our proposals, he would not be able to do it, nor would anybody else.

Mr. Renwick: Why do you say that is in the public interest? My original comment was that I have reservations in my mind as to whether the public interest was served by the defensive tactics taken by Mr. White and his associates in the financial community to avoid that takeover.

Mr. Korthals: In your question on Royal Trust, it is hard to know whether the public interest was the shareholders of Royal Trust or the community as a whole. How would you define the public interest in that situation: the community as a whole or just the shareholders and employees of Royal Trust?

Mr. Renwick: A financial institution serving the community in the provision of a broad range of services as well as serving, of course, the interests of the shareholders. I was thinking of it in the broad interest of the public.

Mr. Korthals: When part of the financial community reacted to that bid, it was as much a reaction to a bid for 100 per cent of the company as anything. Going from one extreme to the other was too big a change for the community to accept. If he had bid for a significant holding in the company, lived with it for a while and made it a two-stage attempt, it would have been a lot easier to accept. You cannot predict whether it would ultimately be in the public interest to have that kind of a change.

For Crown Trust, it was clearly not in the public interest to have changes take place so violently and quickly as they did.

Mr. Renwick: I understand, yes.

Mr. Korthals: There is always a risk if that happens.

The answer to your question about the public interest is not clear. There were risks in allowing it to change. You might also say there were risks in terms of perpetuation of management, which gets me to the second question.

It would seem to me, from your committee's point of view, that what you are trying to do is get the financial services industry, and particularly the trust and loan industry, to operate better. The question is, does it operate better by regulation, by

making it more complicated to operate, to have more policemen, more inspections, more reports, more interference, or does it operate better if you find ways to improve the governance of those institutions?

As I see it, your concern is that something is not right at the present time with the governance of major financial institutions that are broadly held because management can perpetuate itself. If that is a broad perception by the public, something is wrong with the way boards of directors are carrying out their responsibilities. It would seem to me more prudent to try to find ways to improve the governance of corporations or financial intermediaries from the board point of view. You will end up with more efficiencies in the system than if you try to overregulate.

Mr. Renwick: You and I happen to share that view so we are not at issue. My concern was with a simplistic approach to a complex problem. Let me quote to you and your colleagues what the white paper says on conflict of interest:

"As stated earlier, the most effective preventative is self-policing, sound and prudent business practices, and the recognition of their responsibilities by directors, managers, lawyers, auditors and valuers. A multifaceted approach is proposed to encourage all corporations to make the necessary changes in their business practices and operations, and to bring home to professionals the nature and importance of their obligations in carrying out their professional responsibilities and, in particular, the importance of keeping clearly identified the duty owed to the client corporation, regardless of the shareholdings or management position of the person instructing them."

That is what this committee has to comment on. My sense still says to me that I would much prefer a multifaceted approach to try to solve this problem which appeared in the trust industry and focused on Crown Trust. I am concerned we would lose sight of that by simply proposing that we legislate a broad ownership rule of 10 per cent or less.

Mr. Korthals: Imagine yourself a director of a trust company that is owned by one or two people and compare that to being a director of a widely owned one. In the latter case, you have a chance to improve the governance and your role as a director; in the former, you do not have a hope in hell.

In a mutual life company there will be directors representing--I always get this a bit confused--the policy holders and the earnings. But if you are a director of a closely held financial intermediary, you cannot even represent the depositors because the government has looked after them by insuring them. The ability to improve the quality of the governance of that institution as an outside director is entirely at the whim of the owner. I think it is an impossible situation.

Mr. MacIntosh: Mr. Renwick, the owner can get rid of

him. If he does not want a director who is a nuisance to him, he will simply get rid of him.

Mr. Renwick: I can walk away too.

Mr. MacIntosh: I would like to add for the record that I think you are suggesting our proposals are simplistic. That is only because in this discussion we have focused--the questioning has dealt with the issue of ownership. That was not the only thing in our brief. If you take a look, we have proposed that a lot of consideration--

Mr. Renwick: I have looked at your brief and you have covered a wide range of matters which would result in a total restructuring of the trust business and I--

Mr. MacIntosh: I am glad you agree that it is not simplistic, then.

11:50 a.m.

Mr. Renwick: There is a series of proposals. Perhaps I can conclude my remarks on a rhetorical note when I reach that point. I would appreciate your comments or your assistance on the concept of two public interest directors serving on the boards of trust companies. Has the Canadian Bankers' Association given any consideration to the concept of public interest directors? That was fairly high on the agenda at the time of discussions about foreign ownership. Perhaps it has disappeared as an issue but it is used in Ontario, for example, on the benches of the Law Society of Upper Canada and a number of other institutions of one kind or another. Have you given any thought to the role of a public interest director as distinct from the nature of the board of directors as we have traditionally known it?

Mr. MacIntosh: The short answer is no, we have not. I think the banks would take the view that the corporate form of organization works well enough on the whole in this country. The Canada Corporations Act was given a major overhaul three or four years ago. If there had been a perceived problem on the part of the public, it would have been dealt with.

Miss Sinclair: If you actually look at the makeup of bank boards, I think you will find all the banks have public interest representation on their boards. That is probably in reaction to some public concern over that issue. It happened without actual legislation or regulation, as a matter of a response to the public.

Mr. Renwick: I appreciate that comment. I did not mean to be rhetorical about the full spread of your proposals. Each and every one of them adds up to a total package of looking at the financial structure of these particular institutions in relation to the banking and other institutions in the financial community.

I have a real concern that while each one of them raises many questions, if each and every one of them was implemented, I doubt very much whether it would be reasonable to expect these

historically specialized types of institutions to continue to survive at all. The total uniformity of the banking system, the financial system you are basically recommending, identical rules, would certainly iron out the field and has the benefit of simplicity, but it poses real problems for us.

Mr. MacIntosh: We are not proposing identical rules. We have not said that anywhere. We have said people who do the same thing should be subject to the same rules. Now if you take the issue of fiduciary powers of trust companies, historically, since the trust companies started in Canada, they have always been kept separate from banking. We have recently looked up the early legislation.

The Privy Council in the United Kingdom decided in 1835 or soon after that the trust function should be kept separate from banking. The trust companies are now in banking, however, because they are deposit-taking institutions, which they were not in the 19th century. They have fiduciary powers and you have to decide whether the function of commercial lending and the function of being a fiduciary have any degree of conflict, and if so, what to do about it.

That is not a simplistic question either, Mr. Renwick. That is a difficult question. The solution could be to separate commercial lending from fiduciary functions entirely. It could be to ignore them and say you will put up a so-called Chinese wall within the institution. There are various possible solutions but you cannot get away from the fact there is a real conflict.

If you are lending money to a corporation that has publicly issued shares and at the same time you are the fiduciary, the trustee for a pension fund that is investing in the shares of that same corporation, and the corporation gets in serious trouble and is going down the tube, whose interest do you look after first?

Mr. Renwick: That is a serious problem. We tried to deal with that and discussed it at great length in New York and in London in 1974-75. We tried to come to grips with that question, which is unanswered. I am not suggesting it is not a very important question.

I have gone on too long, Mr. Chairman.

Mr. Chairman: Thank you, Mr. Renwick. Before we start with the second round of questioning, Mr. MacIntosh, would you have a problem staying after 12?

Mr. MacIntosh: I do not. I think Mr. Korthals has a problem.

Interjection: 12:30.

Mr. Chairman: Would 12:30 be okay? Fine. We will proceed and start the second round of questioning.

Mr. Cassidy: Mr. Chairman, I have some other questions I wanted to catch up on. I think part of what my friend the member

for Riverdale was raising was the problem that the bank boys represent the financial establishment of this country. One of the reasons for the Skalbaniacs and the Pocklingtons and the Rosenbergs emerging through unconventional manipulation, to put it mildly, has been the fact that the financial establishment of the country has in fact tended to resist new entrants, so someone like a Bob Campeau has been shut out to a substantial extent.

That is not what we are here for, but as a politician coming from where I come from I weep over the fact that it should be a fact. It is basically a tussle for power within the financial elite, and the impact may be great for ordinary people, but they cannot get a piece of that action.

Let me come down to some questions, though, that relate to your specific brief that I did not get a chance to relate to you before. In 1982 the trust company registrar in Ontario was given powers to do two things. One was to regulate share transfers of trust companies, and the second was actually to move in and take trusteeship over a trust company if there was evidence that the company was being mismanaged. In the light of your brief do you question whether either the power to put on a trusteeship or the power to regulate share transfers of substantial shareholders should exist?

Mr. MacIntosh: There are several levels to that question, Mr. Cassidy. In the first place, if you intervene and prevent the transfer of shares of a trust company--I presume you are talking about a publicly issued trust company--the first thing you do is foul up the stock market, because before a buyer and a seller can agree on the transfer, it is going to require the approval of the regulatory authorities. So right away you have intervened in the workings of the stock market in a significant way.

The proposals on the table before you are that you intervene not only with Ontario companies but with any companies in Canada. With respect, I do not think you can really expect to extend your reach into corporations incorporated elsewhere without expecting a similar action on the part of other jurisdictions. What are we going to do--balkanize the financial market in this country by everybody intervening in everybody else's incorporated companies? That is what you will get for sure. That is one consideration.

Finally, we are saying the registrar will have to spend all his time pawing over share transfers, and that could be a major job in itself. We are not just talking about an 80 per cent share transfer. Where are you going to draw the line? When a fellow has 10 per cent and he buys one more share and goes to 10.01, are you going to intervene in that in the stock market? You are going to have to draw the line somewhere.

Mr. Cassidy: If there is a 10 per cent rule, do you think the registrar should have the power to oversee share transfers in an area?

Mr. MacIntosh: Absolutely. He could not enforce it otherwise. That is the case in the banks. You cannot just transfer

shares, put them into some kind of nominee name and expect to get away with it. The nominee is responsible for disclosing the underlying ownership.

Mr. Cassidy: But there the registrar's function is not to look at the quality of the new owner but just to keep count. Is that correct?

Mr. MacIntosh: That is right. When the registrar starts playing God as to which owner is an okay guy and which is not, that is my problem with the views of the trust company people. They say: "We are decent fellows. We run a good show. We are all right." We do not argue with that. Of course they are. We do not argue with the fact that Mr. Jackman and the other members who came before you are very reputable people; they are every bit the equal of bankers in financial probity. We do not argue with that; that is not the problem before you.

12 noon

The fact is that some are not. You are not legislating for the honest majority; you are legislating for the problems. You do not pass laws to put everybody in jail because they do not stay on the right-hand side of the road. Only a few people drive dangerously and you deal with them.

Mr. T. P. Reid: Did Mr. White act as God when he brought Mr. Campeau? He made the decision that Mr. Campeau was not acceptable.

Mr. MacIntosh: I do not think he was paying God. He had to have the support of some shareholders with money.

Mr. T. P. Reid: I guess the question is who plays God, the registrar or--

Mr. Korthals: But you have to wonder, if Campeau had raised his bid by \$2 would he have had the shares? At a price, I think he would have had them.

Mr. Cassidy: What about the powers the registrar received in 1982 to move in and take control, to establish a trusteeship for a trust company where there is evidence of mismanagement? That is a separate question from the ownership question. Do you quarrel with there being some kind of regulatory firefighting power like that?

Mr. MacIntosh: No. You must recognize, as I guess we all do, that was an ad hoc situation brought in under very trying circumstances to deal with an immediate situation. We would feel the Ontario government was justified in doing what it did.

Mr. Cassidy: Does the inspector general have similar powers under the federal Bank Act?

Mr. MacIntosh: He does not need them.

Mr. Cassidy: Does he have them?

Mr. MacIntosh: The powers of the Bank Act and the powers we are talking about are preventive. You do not get into that situation in the first place. That is the whole point we are trying to make to you. What you are trying to deal with is a reactive situation. If a fellow does something the registrar does not like, you are going out after the event to stop it.

Mr. Cassidy: Nevertheless, you are now dealing with 71 banks. There are a number of federal B banks and it is more open for offshore financial institutions about which one knows less of their parentage to operate in this country. Does the inspector general have any type of emergency powers to move in where there is--

Mr. MacIntosh: There is a general power of the Minister of Finance. There is one of these general clauses that he can do anything in the public interest. Ultimately, he would have the same power, but the fact is he has not had that kind of problem.

Mr. Cassidy: Okay. But it is a very general reserve power.

In your reference to business powers, you urge Ontario not to move in a vacuum. The implication is that in this province we should not move to change regulations of trust companies without getting agreement from the feds and other provincial jurisdictions.

Mr. MacIntosh: Except in one respect. With respect to prudential rules, we said, "Yes, you should move now."

Mr. Cassidy: What kind of rules?

Mr. MacIntosh: Prudential. Rules as to capital ratios, liquidity and so forth, rules as to the size of loans to individual borrowers. To those kinds of prudential rules, we have said yes. Those you can deal with in any event. We are saying the relationship between the business and powers of trust and loan companies ought to be looked at in the context of other jurisdictions in Canada.

Mr. Cassidy: Your brief is divided into three areas: ownership, disclosure and business powers. In the case of disclosure, Ontario could probably move unilaterally in requiring tougher disclosure and possibly everybody else would follow along.

Mr. MacIntosh: I think that is true.

Mr. Cassidy: That information, after all, when the registrar eventually bothers to publish his report, does become public. It is not timely now.

With respect to ownership, we face a difficult question. I see from Mr. Lahn's statement of Canada Trust, which is rather vividly phrased, he says he does not anticipate federal legislation until 1986. That is probably realistic. Whatever happens it will be another year or so before whoever is in power federally will focus on this issue again. It is the kind of issue which, if it is not handled between elections, will not be handled.

On the ownership question, what would your advice be? We are the most important provincial regulatory authority on trust companies but we have perhaps 10 per cent of the assets of the trust and loan industry under Ontario jurisdiction. A leadership move by Ontario now in applying an ownership broadening with a 10-year transition could very easily serve as a catalyst to action by other jurisdictions.

On the other hand, I am sure the Ontario companies would react with anguish and talk about how they are being disadvantaged as opposed to their competitors, who would not be under the same rule. What advice would you give to us with respect to this? Should we move now on ownership or should we wait until 1986 or some future time when everybody is persuaded to move in the same direction?

Mr. MacIntosh: That is a tough question. We have not really looked at it from that point of view. You could announce your intention to act in that direction as of now and to say you would prevent any further changes from occurring.

That is what happened, incidentally, in 1965 when Mr. Sharp became the Minister of Finance. He said he was going to bring in the 10 per cent limit. He announced it, although it did not happen until two years later. He said: "As of today, any further changes will not be permitted." He was really dealing with the foreign ownership question. "You can make a statement of intent now and that will have an influence on the behaviour of people in the marketplace."

Mr. Cassidy: I think that is helpful. I was in Ottawa in those days, but I must say it is awfully vague and fuzzy in my mind right now.

What you are suggesting is that Ontario could indicate that, as far as the companies within its jurisdiction are concerned, whatever else happened it would not tolerate any increase in concentration of share ownership. Is that correct?

Mr. MacIntosh: Yes, you could do that.

Mr. Cassidy: It would have to be down--

Mr. MacIntosh: Yes. The big ones in Ontario are already closely held, except Canada Trust which is 30 per cent owned by one. Somebody else could come along and buy the other 70 per cent, I presume, if the price is right. You could indicate an intention in order to forestall any further concentrations.

Mr. Cassidy: With respect to the junior trust companies just established, the member for Rainy River (Mr. T. P. Reid) and I were just chatting here and he suggested maybe that gives a new owner who could have closely held ownership the right to play games for 10 years before he had to come on side.

It is my impression the way around that is to say the exemption, if there is to be any exemption for a freshly minted trust company, would only apply up to a certain assets limit. That

assets limit should be small enough that the company cannot, let us say, be that significant in the marketplace, perhaps \$50 million or something like that.

Do you have any comments on the problem of a company that might use those insured deposits as a means of running up the kind of growth that Seaway had, from \$20 million to \$300 million in a couple of years, thereby jeopardizing a lot of public guaranteed funds as well as the integrity of the industry and other things that we are concerned about?

Mr. Korthals: One thing you can do is not insure broker deposits. The other thing you should give a lot of thought to is to not give 100 per cent insurance.

Mr. Cassidy: What are broker deposits?

Mr. Korthals: They use an agent to find a deposit for them and persuade people to put their money in for the higher rate. You also should think seriously about putting some market discipline back into the whole question and doing some co-insurance. It is just not right that depositors are protected not only 100 per cent for the principal, but 100 per cent on interest.

At the very least, if they put their money in the wrong institution, they should lose a year's interest, let us say. I think also any time you are over \$5,000 or \$10,000 maybe you should be having 10 per cent of your principal at risk. One of the ways you are going to get the discipline is to bring the market forces back to work.

It is very hard for a registrar. That is a tough role, because you will not always find that managements listen to you. What stick do you really have? You do not want to shut down. You are almost like a lender, you cannot control your borrower. Is that not true?

Interjection.

Mr. Korthals: You do not want to comment. Your only solution is the ultimate closing down of this thing.

Mr. Renwick: He is glad to have a friend.

12:10 p.m.

Mr. T. P. Reid: That is the kindest thing that has been said here.

Mr. Korthals: You have to find ways to give him weapons. One way is to set the amount of the co-insurance differently for different institutions, in which case they will have to pay more. That way he can signal.

Mr. Cassidy: Are you suggesting the insurance premium paid by the institutions should change, that it should be variable?

Mr. Korthals: No, I think it is better to give the warning to the market by not insuring as high a percentage of the deposit in some institutions as others. If you have a long record, you have fairly broad ownership and the registrar is very satisfied with the way the institution is governed, he should be able to allow that institution to be competitive by having a higher ratio of the deposit insured.

Mr. Cassidy: I can see some reasons for that. On the other hand, that puts tremendous power in the hands of a registrar. In effect, he is basically issuing a Standard and Poor type of rating on each of the trust companies, which can have a tremendous impact on a company's business.

Mr. Korthals: You have to give him some teeth, short of vetting the loans, because I think that is impossible.

Mr. T. P. Reid: The province was recommending Greymac bonds just before all this.

Mr. MacIntosh: You can have prudential rules. The inspector general of banks has a staff of 30 or something like that, which is half the staff, I believe, of the Ontario superintendent.

Mr. Cassidy: I believe it is more, actually. The registrar can tell you. How many are on your staff?

Mr. Thompson: The registrar's staff totals 11.

Mr. Cassidy: I think that is in the area. That is right, yes.

Mr. MacIntosh: It depends how you define that, does it not? You have the superintendent of the loan and trust companies and the superintendent of insurance. It is all one office. In any event, there are 71 banks and they have a staff of something like 30. You have prudential ratios and capital ratios now, and the inspector general is able to follow those ratios. You could have a differential insurance premium instead of this flat rate.

It does not make sense in insurance principles that there is a flat rate regardless of risk. We always thought insurance was risk-related.

Mr. Cassidy: You are saying then that under the Canada Deposit Insurance Corp. what happens is that Greymac, for example, with its type of business was paying the same insurance rates as the most conservative of the trust companies.

Mr. MacIntosh: The banks pay 80 per cent of the premiums in CDIC. We are the fellows who are bailing out the cost of that.

Mr. Chairman: Mr. Cassidy, we have two more speakers and we will be concluding at 12:30 p.m.

Mr. Cassidy: May I ask one final question? As I said at

the beginning, Mr. MacIntosh, finding ourselves in the same bed, albeit briefly, was an unusual--

Mr. T. P. Reid: A pleasurable experience.

Mr. MacIntosh: I do not know who was more embarrassed.

Mr. T. P. Reid: I would quit while you are behind.

Mr. Cassidy: On the question of disclosure, which has not been a matter of questions here, I think we would agree very much with your recommendations. I have noted as well, in looking at the internal review that on March 4, 1983, seven of the nine provincial loan companies and 16 of the 20 provincial trust companies were late in filing. They have a 60-day requirement under the act. In other words, there have been widespread problems.

Mr. T. P. Reid: And there are no sanctions.

Mr. Cassidy: It is \$50 a day, which is almost as heavy as \$5,000 for the banks. I gather there is an acceptance with the banks that they will abide, even though the fine, I suggest, is minimal.

Mr. MacIntosh: If the fines were much bigger it would not make any difference to us because the banks file anyway.

Mr. Crosbie: Could I clarify that point? There is an important aspect of the present legislation the committee should be aware of. As I understand it, those weekly and quarterly reports--certainly the weekly reports--the banks file and which are published are unaudited statements.

Mr. MacIntosh: Yes, sure.

Mr. Crosbie: That is the point I am making. As to what you are talking about, the way the act is currently drafted it requires the registrar to vet the filings and, in effect, approve them. It is based on auditors' reports and matters of that kind. That is not to say that is desirable, but I am saying it accounts for a difference in time frame. Under the present legislation it would be impossible for the registrar to meet the time frames that the banks currently operate under.

Mr. Cassidy: With respect, I am not talking about the registrar's performance, which was also abysmal.

Mr. Crosbie: No, even the filing by the companies, if it is dependent on their auditor having vetted their year-end statements, that in itself may delay the company. I think Mr. Thompson mentioned that.

Mr. Cassidy: The legislation provincially requires that the statements be audited and in the registrar's hands in 60 days. Mr. MacIntosh tells us that the banks succeed--71 of them--in getting their statements audited and in the inspector general's hands in 65 days.

Mr. T. P. Reid: But they are not audited.

Mr. Cassidy: Theirs are audited?

Mr. MacIntosh: Oh, yes. May I speak to this?

Mr. Cassidy: These are the annuals I am talking about.

Mr. MacIntosh: We are confusing Mr. Crosbie's point. The annual statements are audited. The quarterly statements are not audited, but they are published in 45 days, and I do not mean sent to the registrar, I mean published in the newspapers.

Mr. Cassidy: I am talking about apples and apples. I think it is directly comparable. The fact is that the banks meet that deadline of 60 or 65 days and the trust companies do not.

Mr. MacIntosh: With modern computerization there is nothing to it, if you want to do it.

Mr. Cassidy: My other question relates to disclosure. The registrar's office held back from making public or bringing to anybody's attention the fact that licences had been restricted to a monthly basis--although that was entered in the registry, which is technically a public document--on the grounds that to have made that public by sending a press release out would have jeopardized the companies and thereby created more havoc rather than helping to resolve it. I would like to ask you to react to that.

Mr. MacIntosh: Okay, I will. It is completely insane to publish that you are putting someone on a two-month leash, then a one-month leash and then a two-week leash. It is like putting a neon sign up saying, "Take your money out quickly." So everybody who had money beyond the insurance level of \$60,000, which by then had been announced, pulled his money out.

What, in fact, happened in the case where you had that stated by the federal authorities was an open invitation to pull your money out if it was not insured. So the uninsured fellows all got out first. What was left by the time it was taken into the Canada Deposit Insurance Corp. was only the insured money. The authorities provided 100 per cent insurance for that company. We think that is completely mad.

Mr. Cassidy: You had better explain yourself. Are you saying that all of the uninsured depositors who had deposits over the \$60,000 basically bailed out before the crash?

Mr. MacIntosh: Of course. They bailed out because they were in there only on 30-day and 60-day deposits in the first place. There were no long-term deposits in that company. Out they went. There was nothing left but insured money.

We are irritated about the fact that we bailed out something where 100 per cent of the liabilities evaporated.

Mr. Cassidy: Mr. Korthals, however, says it is appropriate to disclose if you are changing the insurance rate on

a trust company basically because of a change in evaluation of the risk that is involved, or that you change the proportion of the deposit which is insured. Is that not much the same kind of thing?

Mr. MacIntosh: It would need a much more gradual process. It would be a tightening of the screws.

Mr. T. P. Reid: I do not want to beat this to death, but let us go back to the matter of the permanent management. If we went your route, permanent management--I think most of us agree it will be permanent; you obviously disagree with that--is going to put us in the same boat where, if you have management that is there for a long period of time, it is going to be able to do the same kind of thing, set up other vehicles and possibly divert funds in the same way as a one-owner or two-owner operation. Would you not think so?

Mr. MacIntosh: Oh, no. That would be absolutely illegal. Management of a bank cannot turn around and run something over here on the side. The board would have them out of there in 24 hours.

Mr. T. P. Reid: We are talking about a loan and trust company. Let me come at it in another way. I am concerned about this white paper because it appears to me that the registrar is going to be going to the bathroom with everybody who is running a trust company. Some of us are trying to avoid--

Mr. MacIntosh: That is better than being in bed with a political party.

12:20 p.m.

Mr. T. P. Reid: Bathroom, bedroom, we are getting scatological here.

The other anomaly, Mr. MacIntosh, is that here we are trying not to deregulate but to go easy, and the Conservative government of the day, which is conservative only in name, some people would say--we will not go through Suncor and all those things--is trying to overregulate, some of us feel.

However, let me come at it another way. If the rules or regulations on the requirements of the board of directors were tightened and if there was greater liability on the board of directors--and, as my friend Mr. Renwick has indicated, he could walk away if he did not like what was going on--would that solve part of the problems without all of this regulation to ensure that the directors knew what their responsibilities were, were liable for them and would be a little more attentive to what is going on?

My experience as chairman of the public accounts committee with directors for agencies, boards and commissions of the government is that most of the directors are there drawing their \$150 a day. They come in for lunch, they rubber stamp what has to be stamped and off they go. If we tightened those requirements and the conflict of interest rules, would that go a long way to solving this problem?

Mr. Korthals: It may, but you also have to guard against putting directors in an absolutely impossible situation. I think the strength of the board relies on the experience level of those on the board, their independence and generally their ability. It is mutual respect between management and the board that creates the right degree of governance in an institution from the board. There are a lot of things you can do to improve it.

It was always a controversial item in the previous Bank Act that you had to have \$5,000 par value stock as a director. It precluded some people from becoming directors, because you needed a fair amount of money. There were some exceptions. You could use partially paid stock to a limited extent, so you could get people with lesser financial means because they could bring something to bear. But there is nothing like having a stake in the venture to ensure that they will take their responsibility seriously.

Mr. T. P. Reid: At the risk of getting cut off, all of these companies had boards of directors; they even had management who were there. My first question, which was not answered, was what is going to prevent a manager from doing the same thing as some of these other people did if he has a tame board of directors. With respect, you have not answered the question.

Mr. Korthals: I think it is easier to attract independent directors in a broadly held company than in a closely held company. I think directors will have more influence over management if, for example, you co-insure deposits, because the wellbeing of the firm then depends on being able to compete in the market on a creditworthy basis.

Mr. MacIntosh: May I just add something? There is a section of the Bank Act that deals with directors' liability that requires them to restore an improper payment. There is also the fact that the corporations acts' provisions in general apply to directors of banks as well as to other directors nowadays, and the responsibilities resting on directors now are a whole lot more serious and are taken more seriously than they were maybe a generation ago. We would certainly agree with that.

Maybe not all directors of all companies are sufficiently aware of their liability and responsibility, but we are getting into a lot more litigious world these days. People take action--groups and special interests or shareholders. I think we are going to see a lot more of that in the future, and directors will have to beware to observe their responsibilities.

Mr. Korthals: The inspector general of banks reads the board minutes and makes a judgement on them. He will tell you, or he will give you some indication, if he wonders. My point is you have to have reasonable minutes and you have to have some discussion to have the minutes.

That is the area and that makes it easier for directors, if they work together. I think maybe you should have the directors of the financial intermediaries here and ask them their views, rather than management, which is what I represent.

Mr. Crosbie: Could I ask Mr. Korthals if he would recommend that the registrar should read the minutes of trust companies and loan corporations?

Mr. Korthals: I think the registrar should be concerned with the way the institution is governed.

Mr. Crosbie: But would you go that far? Is that what you are saying?

Mr. Korthals: I think if I was a registrar, that would be one way I could find out if it was being governed.

Mr. Crosbie: I raise it, because it was one of the recommendations of the white paper that received some considerable criticism earlier on. It was said to be putting too much paper into the registrar's office.

Mr. Korthals: I do not think you have to send him the minutes necessarily. I think he can come down and talk to the secretary and go through it.

Mr. Renwick: I appreciated the comment about the co-insurance factor, because I have had the funny sense in trust companies about the language with which we carefully protect the trust nature of the deposits and guaranteed investment certificates. It says in the actual statute, "that every trust company receiving deposits shall be deemed to hold the deposit as trustee for the depositor and to guarantee repayment of it," and there is substantially similar language with respect to the guaranteed investment certificates.

It seems to me when we originally passed that Ontario deposit insurance operation, leading to the Canada Deposit Insurance Corp. in 1968, in a sense we made this pretty meaningless. If you take the most important single concept in the English common law system and then require the government to guarantee it, you almost make it ridiculous to be talking about them as trust funds.

It may be that we should be, and I appreciate your comment, finding a road back by way of co-insurance. It is all too easy if somebody comes to me in my riding in Riverdale and asks: "Can I deposit it? Do you think I should put the money in a trust company?" I will say, "Sure, up to so much, because you are guaranteed by the government." I do not tell them, "Yes, they are trustees for you and you can count on them," and so on.

I think that is a very interesting concept that would be well worth exploring, to make people realize if they put money up, they at least have some share of the risk that goes with it.

Mr. Chairman: We have come to the end of our time. Miss Sinclair, Mr. Korthals, Mr. Reid and Mr. MacIntosh, on behalf of the committee I thank you for appearing this morning. It was very informative and stimulating.

The committee adjourned at 12:30 p.m.

J-29

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO

THURSDAY, FEBRUARY 23, 1984

Morning sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Boudria, D. (Prescott-Russell L)
Breithaupt, J. R. (Kitchener L)
Cassidy, M. (Ottawa Centre NDP)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Kerrio, V. G. (Niagara Falls L)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDF)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitution:

Reid, T. P. (Rainy River L-Lab.) for Mr. Kerrio

Clerk: Arnott, D.

Staff:

Mooney, P., Researcher, Legislative Library
Nigro, A., Researcher, Legislative Library

From the Ministry of Consumer and Commercial Relations:

Crosbie, D. A., Deputy Minister
Thompson, M. A., Superintendent of Insurance and Registrar of
Loan and Trust Corporations, Financial Institutions Division

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, February 23, 1984

The committee met at 10:16 a.m. in committee room 1.

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO
(continued)

Mr. Chairman: I see a quorum. Now we have the dean of the committee here with us, I think we may be able to proceed. We are a little bit late. After the admonishment we had the other day, Mr. MacQuarrie, and I hope you took note, I noticed you were here at 10:02 a.m..

Mr. Boudria: Let the record show he is here himself.

Mr. MacQuarrie: I was frightened by his professional irritability.

Mr. Chairman: Gentlemen, basically we are here this morning to--

Mr. T. P. Reid: Before we get into this morning's business, I wonder if I could just raise one matter. When we were discussing, not yesterday but the day before, the valuation of the properties with the appraisers, I raised the point Mr. Beaton made to us on Tuesday, February 14. He said that according to the way they did their appraisal on the Cadillac Fairview transaction, they took a unit and then they extrapolated. They came to a sum of \$330 million for that property.

There was some consternation within the committee and some felt that was not what he said. Re-reading Hansard, I would refer you to page 25:

"Mr. T. P. Reid: So, based on that, you are telling us the value, based on what happened in the market previously, was \$330 million?" Mr. Beaton replied, "Yes."

You will recall that I raised this when the other appraisers were here the day before yesterday. They were disputing the valuation, and some of the members said, "No, we were talking about full market value or fair market value," and everything else.

Reading Hansard, it is clear that Mr. Beaton said the value they placed on it was \$330 million and that was a scientific and to use his words "mechanical" approach. That was the price they arrived at, so there was no question in Mr. Beaton's mind that was the fair market value.

Mr. MacQuarrie: Mr. Chairman, Mr. Beaton's case study is

a volume this thick and it can be made available to members of the committee so they can satisfy themselves.

Mr. Mitchell: It was left with the chair, and the committee can--

Mr. T. P. Reid: I am just making the point that we had this problem about the real valuation on that property, and that is one of the nubs of this whole thing.

Mr. Chairman: I think one of the problems we have when it comes to the valuation is when you are talking about marketing all of the units at one time, selling them in a big package, anybody who is buying is certainly going to ask for a better price. If they are sold individually, I think we could talk about it, but when you talk about a big package, people in those kinds of transactions are looking for a cash discount.

Mr. T. P. Reid: That is not what Mr. Beaton said, though.

Mr. Mitchell: Mr. Beaton said that price was based on "a willing seller and a willing buyer," if I remember his words.

Mr. T. P. Reid: There were another 18 transactions, in fact, 36 buyers and sellers, who had been in the market previous to that. That is what he said. I just put that on the record.

Mr. Chairman: Are there any further comments on Mr. Beaton's comments? James, have you anything to add?

Mr. J. A. Taylor: No, nothing, Mr. Chairman.

Mr. Chairman: There being no further comments on this particular matter, I think we should move on to the matter which we want to discuss this morning. Peggy and Albert will be giving us a briefing on all of the written briefs.

Mr. Renwick: I am quite looking forward to an analysis of the briefs. I would hope the committee would give some thought to the kind of opening disclaimers we should make in the report. These would be with respect to the ongoing police investigations and to the ongoing litigation which is involved. All these have either been imposed on us or are self-imposed disciplines on the limited mandate of the committee. I think we should simply comment on the limited time we have had to do it.

We cannot be seen to be trying to make an all-inclusive survey of the financial world of Canada or of the trust industries as such. I think it very important for us to clarify right at the beginning of our report exactly what the hell our mandate was and how restricted and how limited it was.

We could add a further disclaimer that we are not in any way commenting, favourably or unfavourably, upon the performance of the Ministry of Consumer and Commercial Relations. Much as I would have liked to have been in a position to do that, we must not be seen, in the way the ministry has chosen to deal with this matter, that we are in any way approving or disapproving of the regulatory

performance of the ministry. That will have to await some other day--if there ever is such a day, which I doubt very much.

I want it very clear that we are not approving in any way what the regulatory authorities have done. They have not made their case and we certainly have not made any case in that field. I would certainly be interested in what the member for Rainy River (Mr. T.P. Reid) has to say about that kind of approach to the opening part of our report.

Mr. MacQuarrie: Mr. Chairman, I think there is a lot of merit in what Mr. Renwick says. I think we should certainly indicate the constraints under which we are operating in carrying out the hearing. It might well be appropriate to note that we neither praise nor condemn the ministry people. It would sound then something like a coroner's inquest verdict where--

Mr. Renwick: Maybe that is what we are.

Mr. MacQuarrie: It seems like a very lively corpse.

As I say, I think it is fair at the outset to give an indication of the constraints under which we were proceeding--the fact that we were not carrying out a full review of the loan and trust industry and its full operation. We should note we were looking at specific areas of operation, etc. and then go on from there. That is fair ball as far as I am concerned.

Mr. J. A. Taylor: Mr. Chairman, I gather our mandate is to make some response to the white paper. In so far as that is concerned, the response we will be making could or would have been affected by a more detailed examination of those problem areas in regard to certain trust companies and all of the matters surrounding that continuing saga. It also could be affected by the short time we have been given, but the effect this will have on the quality of our response is yet to be determined. Those things may or may not have an effect on what our response is to the white paper.

My initial reaction is the more time you spend, up to a certain reasonable degree, and the more thorough and exhaustive your investigation and analysis, the more quality the response might manifest.

I am concurring in some degree with the tone of what has been said, but I hope those factors do not render inadequate our response, whatever that may be. To some extent, it may be a pedestrian response to the white paper and we may be coming from points of view that may not be as well founded as they would be if we had made a more exhaustive analysis. However, we would hope to be constructive in terms of our response to the white paper.

Mr. Chairman: Thank you, Mr. Taylor. I agree the committee has been working under certain restraints and all of the committee members have used a lot of self-discipline to stay away from the areas that were under litigation. But I do not see a problem with it. We seem to have a consensus that we should write it into our report and I am sure--

Mr. Renwick: I do not mean to disrupt the proceedings so early in the morning on that point, but I would be anxious, if it is possible--and it may be too early to tell--to find it possible within the committee to reach agreement on a good part of our response, rather than to have disclaimers scattered throughout the report. It may turn out there are different views, that different members will feel they have to, but it would be consistent with the tradition of the work of the committee that we try as best we can to meld our differences into a quality report, if that is possible.

Mr. MacQuarrie: I sense a certain amount of consensus just in the line of questioning and approach to the thing, so I do not see too much difficulty in that.

Mr. T. P. Reid: Mr. Chairman, I would concur with my friend the member for Riverdale (Mr. Renwick). Frankly, I am a little disappointed we have not had a more full discussion of the role of the regulators in the situation that has brought us here. There are a hell of a lot of questions that have not been answered and probably never will be, court cases included.

I go back to the terms of reference when the minister sent the report to the committee and said he wanted a full discussion of all these matters.

Mr. Mitchell: Perhaps, though, we are somewhat prejudging what our activities might be when we start going through the white paper.

Mr. T. P. Reid: My problem with what Mr. Renwick says is, are we going to write our own terms of reference then? We were told by the minister to examine the white paper and have a full discussion. We obviously have not had a full discussion and I think we have to state very clearly at the outset what we did do and what did not attempt to do, so there is no doubt in the minds of members of the public that we are not some part of, for want of a better way of putting it, a whitewash, that collectively we have not tried to cover up what happened on all sides of the question.

I certainly do not want to put my name to a report in which we are just going to come out with, "We think item 2 under (b) is fine," and let it go at that. I think we have to make it quite clear exactly what we were about in this committee and, at the same time, what we were not about.

Mr. Mitchell: Mr. Chairman, I bow to my learned legal colleagues on this committee. I do not have any disagreement in particular with what they are saying. I just have a feeling that perhaps, as our work progresses over the next week, disclaimers might not be necessary. However, I think what will prove that is just what we do over the next period of time.

10:30 a.m.

Mr. T. P. Reid: We have not dealt with the essential question, which is, do we need the white paper at all? Do we not have sufficient powers to deal with situations as they arise?

Mr. Mitchell: Do questions, debate and so on about the thing we are talking about not flow from that very comment?

Mr. T. P. Reid: We have not been allowed to deal with that question, or have individually constrained ourselves.

Mr. Mitchell: There are constraints.

Mr. J. A. Taylor: That might be our response by the time we finish the analysis and review of the white paper.

Mr. Mitchell: Mr. Chairman, as you said, there does seem to be some measure of agreement should certain things be necessary. I suggest we proceed and if that point arises, fine. If it does not--

Mr. Cassidy: Mr. Chairman, I apologize for being a few minutes behind in coming in. I gather the thrust of the discussion is, among other things, to make it clear that we could not and did not carry out a review of all the regulatory activity by the ministry, however desirable that might have been, and we need to make that clear in the report.

In looking through the specific recommendations in the white paper, my sense is there are probably a lot of things about which I do not have any particular feelings either way and about which I am not strongly in disagreement.

The problem is that 80 per cent of what is in the white paper is not particularly important either. The most important things are issues such as the ownership issue, on which we have had a great deal of discussion in the last two and a half weeks. The questions as to whether excessive regulation is put in in the powers given to the registrar and whether there is too much superstructure and too much bureaucracy are not really dealt with well if one goes through the seven or eight different groups of recommendations.

I do not think the ownership recommendation even comes in. It is referred to in one of the earlier sections of the white paper, but not in the recommendations, because the people drafting the white paper indicated clearly why they did not intend to make a recommendation with respect to ownership.

We run into the difficulty that the report of this committee could be really seriously misinterpreted if we came out and said we basically did not disagree with 60 or 70 per cent of the recommendations, because politically the minister, the government, the staff or the registrar might go away saying, "That is great; most of what we put forward was endorsed," when although most of the recommendations might be endorsed by number, in substance the white paper was not really accepted by this committee.

I am not sure how to handle that, but I see it as a problem. There are some fairly substantial differences of view. For example, when Mr. Gillies was speaking to Mr. MacIntosh yesterday, he took a pretty fundamental position opposed to what the bankers

were saying with respect to the ownership issue. Since the bankers were speaking for us at that time--

Mr. Chairman: When you say "us," who do you mean?

Mr. Cassidy: I mean my colleague and myself.

Mr. Chairman: I thought yourself. I do not know about your colleague.

Mr. Renwick: He was using the royal "we."

Mr. Chairman: I am sorry. I just wanted to make sure Mr. Renwick was paying attention.

Mr. Renwick: I think Mr. Cassidy sensed that he and I have some slight divergence of opinion on this.

Mr. Gillies: I just want to be clear that I think the words I used yesterday were that I was unconvinced. I am still subject to the arguments of the New Democratic Party bank lobby. I am not convinced--

Mr. Cassidy: We do not get direct contributions from them; you do.

Mr. Chairman: Not that you do not want them.

Mr. Gillies: I remain unconvinced the overall solution lies with the ownership mix; maybe I am wrong.

Mr. Renwick: I sensed a little scepticism in my comments yesterday as well on that issue.

Mr. Cassidy: Part of the problem in assessing the recommendations lies in that very basic question, because there is no question that the emphasis on regulation is, to a large extent, related to the reluctance to interfere on ownership and the limited degree of emphasis on disclosure which is in the white paper.

If it is the position of the majority of the committee that the ownership issue is not to be tampered with, then I do not know where the hell I stand on the whole thing. I find it impossible to be asked to judge recommendations on the basis of what I consider to be a faulty premise, a bad public policy. I put that as a dilemma at this point.

I have been struck, as I think most of us have, by the continuing good humour of the members here and by the fact that we had some pretty dispassionate and constructive discussions of issues that were provoked by a number of the different briefs. The committee has been refreshing. It has been a good deal more interesting that I thought it would be when I was asked how I wanted to spend the month of February.

Mr. Chairman: When we come to the ownership question, I agree with you. There may not be unanimity because we may be

looking from it at different angles. Certainly, you are free to express your views, as are the other members to express theirs. If you cannot agree with it philosophically, or whatever way, you should not. As Pat says, you may have to put in a disclaimer with the minority report or something to that effect.

Mr. Mitchell: With all respect, I think that may blow the very things you are talking about.

We are now starting to discuss the content, if you will, of the white paper. Prior to that the committee had scheduled to hear from the researchers this morning to cover point by point things we may have missed. I would like sufficient time to do that.

Mr. J. A. Taylor: Enough of this disruptive chatter; let us get on with it.

Mr. Chairman: We have heard the oral presentation and in fairness, we should hear the written presentation. The two researchers are trying to make our job as easy as possible. We all agree it is a complicated affair, but we have to plod on. I will turn it over to Albert and Peggy now to give us a briefing on the written briefs.

Mr. Nigro: I am going to be speaking about eight written submissions the committee has not heard from, and my colleague will be handling 10 more, so we have a total of 18 to go through. Most of them are fairly short but that gives you some idea of the number.

I would like to start with exhibit 7, which was submitted by Professor Seymour Friedland, who is a professor of economics and finance at York University with the faculty of administrative studies.

Professor Friedland's presentation has two parts. The first part is relatively short and deals with the white paper itself, and the second part is a paper he has written on deregulation of the financial services industry, which is essentially the point he is getting to. He would like to see the industry deregulated. In any case, I have only dealt with the part that deals with the white paper.

The first recommendation that can be extracted from his paper, and I think it sums up what he is saying, is that many of the white paper proposals are retrograde in that they vest a great deal of power in an expanded bureaucracy, including industry representatives, at a time when financial service innovations are pouring forth. This regulation, which includes a proposal giving discretion to the ministry, will create entry barriers that will inhibit the expansion and growth of the newly emerging financial services industry, which is described, as I said earlier, in the paper he attached to his brief. He sees this as contrary to the worldwide trend in diversification of financial services.

That is his general criticism of the white paper. He make a specific comment on the fourth recommendation in part C of the white paper which deals with the minimal capital requirements to

enter the marketplace. He says that the requirement for more capital makes it more difficult for a new firm to enter the market. It is difficult to see how \$10 million assures more business ability or honesty than does \$1 million.

Finally, he makes a general comment on section I of the white paper which deals with financial records and reports. He says this is the one section of the white paper which is forward-looking and that it is essential to have an early warning system that does not require a small army of auditors continually monitoring the activities of the regulated firms; it should require fewer but more highly qualified investigators.

10:40 a.m.

In reference to that, I think he was talking about the new system which the ministry has introduced on a trial basis. Basically, those are the recommendations in brief 7.

Brief 8 was submitted by Guardian Trustco Inc., which is the parent company of Guardian Trust, a trust company incorporated in Quebec in 1929 and licensed in Ontario since 1976. If you look at the brief, the first section which is dealt with is the question of size. You might want to look at recommendation 3 in part C, "Carrying on Business in Ontario," which gives us some sense of how size evolves in the white paper.

On the general thrust of the paper, Guardian Trustco submits that the white paper has "an unstated bias towards accepting size as a significant measure of development...growth for the sake of acquiring extra powers could tend to be contrary to anyone's interests...experience and competence should be the only criteria considered in decisions to grant increased powers."

The brief then goes on to consider the question of capital. It notes that the question of permanent capital was not addressed in the white paper and it has a comment on the question of permanent capital. That would probably pertain, in terms of the recommendations in the white paper, to recommendation 1 in section H, "Financial Standards and Controls," which deals with the question of the whole borrowing multiple.

Guardian Trustco recommends that a broad definition of what may be considered permanent capital for purposes of calculating the leverage multiple be used. Common and nonretractable preferred shares of all types should be included and long-term subordinated debt should also be considered as permanent capital.

The paper then goes on to consider the assignment of trust powers by appointment of agents. You might want to look at point 8 in part F of the recommendations. It is on page 11 of the white paper. "No corporation should be permitted to carry on any estate, trust or agency activity in Ontario until it has satisfied the registrar that it has the commitment, organization and resources to do so on a long-term basis."

On that question, Guardian Trustco observes that the white paper does not address the practice by trust companies of

appointing other financial institutions as their agent in exercising some of their fiduciary responsibilities. In this situation, ultimate fiduciary responsibility rests with trust companies while they have limited ability to direct or control the exercise of the fiduciary powers. It seems illogical to insist on a high degree of expertise before granting fiduciary powers and then allowing them to be delegated to agencies which have few, if any, qualifications.

Similarly, it goes on to consider the trust relationship with depositors. In the text of the white paper itself, but not in the recommendations, on page 28 it is noted that the white paper wishes to maintain the trustee-beneficiary relationship between a depositor and the trust company rather than imposing a debtor-creditor relationship, which was the recommendation in the federal white paper.

On that question, Guardian Trustco notes that it strongly concurs with the recommendation in the white paper, which I have just referred to, that the trust form of relationship between the company and depositors be retained.

On page 4 of their brief, they deal with the question of third mortgages. The fourth recommendation under the "Business and Powers" section of the white paper, which is on page 11, notes, "Third and subsequent mortgages should be limited as investments for all loan and trust corporations." There are a number of briefs that did address that question. What Guardian Trustco said was that it was illogical to prohibit the investment in third mortgages and in more subordinated debt. Ranking charge is a weak measure of soundness of investment. It is more logical to prohibit any mortgage loan which, when totalled with other higher priority charges, would exceed the legal limit of a single loan.

They go on to consider the percentage share ownership in other corporations. If you look at point 8 in part E, "Conflicts of Interest," which is on page 11 of the white paper, that provision prohibits corporations "from purchasing or acquiring goods or management services or paying finders' fees to any affiliated corporation," etc.

They oppose "reducing the maximum investment in another corporation from 20 per cent to 10 per cent." They feel "depositors' interests are better protected when the investing trust company can have a majority say" in the corporation invested in.

They also comment on the qualifications of real estate appraisers. They say "real estate appraisers used by trust companies" should be registered with the registrar, who could cancel registration if problems arose. I presume they mean if problems arise with the appraisals.

Finally, the last recommendation of their paper is about the disclosure of shareholder transactions. This deals generally with part E of the white paper on conflict of interest, but it deals more with the text on page 26 and 27 than the specific recommendation in the paper.

They say it is "inappropriate to require approval by the board of directors and the making public of transactions between minor shareholders and a trust company." They feel rules similar "to those applicable to insider trading" should be considered instead. They are suggesting that general insider trading rules should be adopted rather than the disclosure recommendations that are found in the white paper.

The next brief I will deal with is brief 9, which was submitted by the law firm of Fallis and Fallis. They only deal with really a single issue and it concerns the rights of a judgement creditor. They note that for the purposes of garnishment, deposits in trust companies should be treated no differently from those in banks.

The reason they make that recommendation is that section 197 of the present act permits the trust companies to retain up to \$300 to the benefit of the customer at the expense of the judgement creditor. That issue was raised when the deputy took us through the act itself. They find that to be incongruous. If you have the \$300 in a bank, it could be garnished, but they could not garnish the \$300 in a trust company.

Mr. T. P. Reid: I am going to change my account.

Mr. Nigro: We learn that in law school, actually.

In Huronia Trust, which is exhibit 12, they begin by making a general comment on the administration suggested in the white paper. Huronia Trust agrees with the creation of a commissioner, which is recommendation 2 in part B and the financial advisory committee structure. However, they feel "the watchdog approach is overemphasized, and could lead to extensive and expensive new reporting requirements."

There should be greater "emphasis on input from companies to ensure that timely changes in regulations are made." They also recommend "regular information reported to the registrar be shared with the commissioner to avoid duplication of reporting." They generally agree with the thrust, but they would like to make sure it is not too onerous.

In carrying on business in Ontario, which is discussed at the top of page 2 of their brief, they note the minimum \$10-million capital requirement could penalize regional trust companies, those the ministry was encouraging to start seven years ago.

If exceptions are not permitted, small companies would either have to "embark on rapid (and perhaps imprudent) expansion...or arrange either a merger" or sale of the company. Small regional companies should be allowed to continue and should not be penalized through the restriction of either borrowing powers or allowable services.

On the same page of their brief they deal with business and powers. On the question of commercial lending, they say they "welcome the possible expansion of commercial lending activities,"

because in order to "provide proper service to commercial customers it is often necessary to ensure letters of credit for contracts, municipal requirements and even utilities."

There is nothing on that point in the recommendations, but if you look at page 30 of the white paper itself, it is recommended that loan and trust companies should not be permitted to issue letters of credit or other guarantees. They feel it is impractical to extend commercial lending activities without allowing those other activities.

Under the question of management and organization at the bottom of page 2 of their brief, they say that while "an investment committee is desirable...it should not be mandatory." In smaller companies the board of directors already performs this function of vetting the investments.

10:50 a.m.

Finally, they make two general comments on page 3 of their brief. The concern over the effect of "the massive expansion of regulatory powers, and increase in reporting" on smaller companies is expressed. It was indicated that this could adversely affect the management of the companies and ultimately their profitability.

Finally, under general comments they say they generally agree with provisions relating to standards and requirements for those people who wish to start or acquire a trust company. In their opinion an ounce of prevention will always be more effective than a pound of cure.

Mr. Cassidy: We have heard that one before, have we not?

Mr. Chairman: It was a while ago, though.

Mr. Nigro: Brief 14, the Canadian Life and Health Insurance Association. By way of general comment, that association generally favours changes in the legislation, as the act no longer corresponds to the competitive environment in the financial industry.

Mr. Renwick: Say that again.

Mr. Nigro: In general they favour changes in the actual reforms in the act because it is no longer adequate, in their opinion, to regulate the competitive environment in the financial industry that now exists. They note, I think, that the last major change in the act was in 1949. They note it on page 2 of their brief, actually.

They also expressed a concern about the categorization of companies, and they do this under the title of "Government Intervention," which is on pages 2 and 3 of their brief. The association strongly opposes the system whereby individual companies would be categorized by government. This system would mislead the public about the soundness of various companies, repress specialization and encourage oligopoly. In addition, the system would be unique in the Canadian financial services industry and disruptive to the whole industry.

Mr. Cassidy: Which group was that?

Mr. Nigro: That is the Canadian Life and Health Insurance Association, and it is brief 14.

Mr. Cassidy: And they are opposed to any categorization.

Mr. Nigro: I think what they are opposed to is the system of categorization proposed in the white paper.

Mr. Cassidy: The junior and senior trust company thing. Is that right?

Mr. Nigro: Yes. If you look at pages 3 and 4 of their brief, they say, "A company's flexibility to handle expanded business and opportunities would be enlarged if that company could show, to the satisfaction of the registrar, it has the commitment, organization, expertise and resources to carry out the new functions." There they are paraphrasing the white paper.

They conclude from that regulation: "As a result, companies would be categorized initially by government for administration purposes, but this categorization would ultimately spill over into the marketplace and affect the general public's assessment of each institution. Government should not create a classification system which could impair a company's market acceptance and therefore its capacity to grow."

I am not sure exactly what they mean by that. I can only tell you it is in the brief.

Mr. Cassidy: In fact, though, we have schedule B banks, which would, in effect, be a categorization, would they not, as far as the federal regulations are concerned?

Mr. Nigro: Schedule B banks, I think, are of two categories: one is Canadian, as I have found out, and one is non-Canadian banking institutions. I am not sure how the comparison would carry over there.

Mr. Cassidy: But I have a feeling schedule B banks are also more limited in their powers. Is that correct?

Mr. Crosbie: Yes. We also have within the act, of course, loan and trust companies and we have mortgage investment corporations, which have lesser capacity than trust companies.

Mr. Cassidy: So to live is to choose, is that right?

Mr. Crosbie: Yes.

Mr. Boudria: So the categorization is there.

Mr. Cassidy: Okay. That is fine.

Mr. Nigro: In any event, the next recommendation they deal with is the extraterritorial effect of the white paper. Specifically I would refer members to recommendations 1 and 15 in section C, "Carrying on Business in Ontario."

Number 1 provides that all loan and trust corporations carrying on business in Ontario, wherever incorporated, should be subject to essentially the same rules, standards and criteria. Fifteen basically says much the same in the sense that loan and trust corporations incorporated outside the province but carrying on business within the province should be closely regulated in the same manner as Ontario loan and trust corporations.

Their comment on this is as follows: "In essence, this proposal"--I was not sure which of those two it was referring to--"would permit the registrar to supervise financial institutions which are already overseen by other regulatory authorities in Canada. It would give the regulations an extraterritorial effect." This would result in an overregulation and could result in conflicting regulation and/or retaliation by other governments. For constitutional reasons there may be some doubt whether the extraterritorial effect could be made enforceable.

Mr. Mitchell: I guess that flows, then, from the comments that have been made earlier about the fact that regulations or whatever should be Canada-wide. That is the direction the Business Corporations Act took in attempting to draw up something that was uniform throughout the country. There was a comment about the difficulty in dealing with the other jurisdictions. I think Mr. Thompson felt they were waiting for Ontario's lead with any of the changes.

Mr. Thompson: Yes, they are. I think uniformity is very desirable. There is such a wide variety of statutes, particularly in the loan and trust area. There are two provinces with none.

Mr. Breithaupt: Which are they?

Mr. Thompson: Prince Edward Island, which seems to be incorporating loan and trust corporations nowadays, is the primary one. I think also Nova Scotia or another of the Maritime provinces; I stand to be corrected on that.

Mr. Crosbie: If I could comment on that last recommendation, the other side of the coin concerns what we as regulators do if an extraterritorial company is carrying on business in Ontario under rules of incorporation that allow it to do things which, for argument's sake, clearly should be prohibited. We prohibit all Ontario-incorporated companies from doing them. If Ontario does not control the extraterritorial corporation it runs the risk it tries to protect against here--and also may give them an unfair competitive edge.

I think this was one of the thoughts behind our philosophy that there should be, to use the expression used the other day, a level playing field for all trust companies in Ontario.

Mr. Cassidy: I think the issue of extraterritoriality and uniformity needs to be addressed. Are there not precedents saying in effect that where the regulation of trust companies in another jurisdiction is satisfactory and is accepted, that there is no application of Ontario regulation? Some people were saying

not to act until there is agreement, yet Mr. Thompson says the other provinces are saying, "We would like to have uniformity; we would like you to take the lead."

Mr. Crosbie: There are provisions in the act that allow the registrar to accept the inspection by another government. So if one could agree the whole inspection program and regulatory process of another province or the federal government was as good as what was deemed necessary in Ontario, it would be accepted. The registrar could say: "Fine. I will just accept that province or the federal government's report and I will not carry out inspections of that company."

There is another aspect to it. From the constitutional point of view, an Ontario law of general application may very well have application to any extraterritorial corporation wishing to carry on business in Ontario. This is assuming we were regulating within our own area of constitutional responsibility.

Mr. Cassidy: I suspect that is true. You can only regulate to the extent (inaudible) business in this province.

Mr. Crosbie: Yes.

Mr. Cassidy: Could you not take that a step further? You are simply saying the registrar has the authority to accept an inspection carried out by another jurisdiction. If I was in Alberta, for example, I would bristle at that. Alberta generally does bristle if it is something Ontario does.

I would ask, "What is wrong with what we do here that we have to let the Ontario registrar, in his or her wisdom, decide by grace and favour that our inspections are okay, but constantly have the power up the sleeve to cancel it?"

Mr. Crosbie: You have picked a good example. What is the inspection staff in Alberta, Mr. Thompson?

Mr. Thompson: Several people. There is an examiner.

You get into these very difficult problems. We might well get the annual return the company would file, but some provinces contract out the examination to the federal government and that jurisdiction might not release anything further to us. The federal government feels it is doing the examination by contract and it cannot release any information on it except to that provincial jurisdiction.

If the federal government simply accepts it then we do not have the benefit of looking at it. We do not actually see what is called the working papers of the company.

11 a.m.

Mr. Crosbie: I should point out, Mr. Cassidy, this point is under discussion by the various provinces right now in an effort to reach some agreement on the degree of exchange of information. One very practical issue arises out of that if you

have different standards in two different provinces and the incorporating province, for example, has a lesser standard.

We could discover something in a report which has gone to that province and we could say, "In Ontario, that is not prohibited," and we take steps to prohibit it in Ontario. It is seen as an embarrassment to the incorporating province that they have not moved on it. This has led to some reluctance to share information just so they will not be embarrassed by the activity or actions that may be taken in another province.

It is not a simple matter to resolve but is one that is very earnestly being pursued.

Mr. Cassidy: Maybe we should come back to this issue, Mr. Chairman, because the researchers have been making a presentation. It is a real issue that should be addressed by the committee.

Mr. Chairman: All right, fine. I was going to make a comment, but I will let it go.

Mr. Boudria: Following along the same lines as Mr. Crosbie, what is "deemed to be doing business in Ontario"? We keep using that expression. Let me give you a few scenarios where in my own mind it is not necessarily all that clear.

For example, you are living near the Ontario-Quebec border, in the Ottawa area. A Quebec trust company sells guaranteed investment certificates through an Ontario mortgage broker or something. Is that deemed to be doing business in Ontario?

Mr. Thompson: Yes, it definitely is, because there is a marketing being done. The term used in the act is "carrying on business." In other words, there is some case law on it, it is not an isolated instance.

It certainly does not involve wanting to go over the border and do business. I can buy my insurance and other things and make my investments outside Ontario by going over the border, but if you are designating an agent in the province, then you are actually soliciting in that province.

Mr. Boudria: Let us go one step further. Say you are operating out of Hull, Quebec, and you place an advertisement in an Ottawa newspaper soliciting business, although you are still physically located in Hull, Quebec. That is not deemed to be doing business in Ontario. Am I right?

This is a very grey area for me, coming from the part of the province Mr. Cassidy and I do.

Mr. Crosbie: It happens on the other side of the province too. With Winnipeg being such a large centre relative to northwestern Ontario, you get conflicts of people coming from Winnipeg and doing real estate or insurance business in northwestern Ontario. It is an ongoing problem.

Mr. Boudria: It is just not quite clear to me as to what is "deemed to be doing business" in that respect.

Mr. Chairman: We will hope to come back to that. We will discuss it a little further. Could we continue through the briefs and maybe we will come back to this subject for a little more discussion?

Mr. Cassidy: Mr. Chairman, I am not taking notes. Are the researchers taking notes of some of these issues that come up that perhaps need to be discussed?

Mr. Chairman: Certainly.

Interjections.

Mr. Chairman: You are being quoted, Mr. Cassidy.

Mr. Nigro: Getting back to the Canadian Life and Health Insurance Association Inc. brief, exhibit 14. Two further recommendations arise from their brief.

The first one deals with government intervention. They suggest the white paper proposes to empower the registrar to intervene into various internal matters, including level of responsibility for staff to approve loans and investments and the appointing of chief executive officers of companies. They say, "Government intervention in internal management is only necessary and appropriate where companies are experiencing financial difficulties."

The final recommendation deals with the question of investigation and rehabilitation, which is on page 5 of their brief. They say: "We welcome the strengthening of the investigative capability of the ministry and the creation of rehabilitation functions for restoring companies in difficulty. We also welcome the development of a capability within the ministry to supervise and direct those responsible for the taking of possession and control of the assets of the company." I think that is in reference to the enforcement section, section J on page 12 of the summary of recommendations in the white paper.

The next brief I have looked at is exhibit 15 from the Regional Trust Co. It is a fairly long brief. They are concerned with the white paper being what they call inaccurate, incomplete or misleading, or being insufficient or inappropriate.

Mr. T. P. Reid: Besides that, they do not like it.

Mr. Nigro: They make the caveat that much of the material in the white paper is well considered and well said, but they make many specific comments on sections of the white paper, if I can go through that with you.

On page 5 of their brief they get into specific sections of the white paper and they start off with "Subject 1: New Regulatory Direction."

In their view, the proposal of a single commissioner with advisory assistance found in part B of the white paper, "Administration," may be contrasted with a several-member commission that regulates the security industry. Some explanation for the lack of a multimember commission is required.

On the same page, they deal with the question of investigations. They say the distinction between regular investigation and special investigation is interesting. That distinction is in recommendation 7 in "Administration." It may not be "useful or even relevant. Surely an ordinary examination should seek clear answers to those questions that are important to the condition of the institution, no matter where such questions lead."

Mr. Cassidy: They are arguing that the distinction, having two separate groups, one for routine examinations and one to investigate, does not make sense. Is that it?

Mr. Nigro: Basically; they do not think it is "useful or even relevant."

Mr. Cassidy: Which group is that?

Mr. Nigro: It is Regional Trust, brief 15. On page 6, they go on to consider the question of incorporation, specifically on part C, "Carrying on Business in Ontario," recommendation 4 dealing with the minimum capital requirements.

There is no rationale for making the distinctions in this proposal. "There is a danger that a series of intermediate requirements may be built up in the range between \$2 million to \$10 million." That is in the range created by going from a loan company to a full trust company in the regulations.

There is no recommendation on this, but we did receive a number of briefs that commented on page 18 under the title, "5. Subsidiaries." The second full paragraph reads as follows, "It is proposed that the power to incorporate or acquire mutual funds and mutual fund sales and management corporations be eliminated for the future."

A number of briefs commented on that, on the text rather than a recommendation.

The Regional Trust Co. said there would be no ground at all for eliminating the power of a trust company to acquire or incorporate mutual funds and related sales in management companies.

Under the new restrictions and limitations on page 7, if you look at recommendation 7 in part C of the white paper, which is found on page 9, it says, "The registrar should be given the power to require subsidiaries of loan and trust corporations to cease unacceptable business or financial practices."

The section which prohibits mortgage brokers being on the boards of directors of trust companies is what I want to refer you to. In their view this is unfair to ethical brokers and must be resisted. "Further, the mortgage brokers do not have a monopoly on

potential for conflicts of interest. Investment dealers often carry out large transactions with trust companies, as do real estate investment companies. Lawyers often arrange for the documentation and securing of these transactions."

In other words, they question why mortgage brokers are singled out, rather than any of the other groups which may also have conflicts of interest.

11:10 a.m.

Under the title "New Restrictions and Limitations," which is considered on page 7 in their brief, they say that as to the suggestion there be limited restrictions or limitations on persons and insiders to whom the making of loans is inappropriate--which is on page 26 of the white paper--the present wording "would appear to prevent a trust company from paying its officers for their services."

If you look at page 26 of the white paper, under heading 3, the third recommendation reads as follows: "Commercial transactions involving transfers of goods or payment for services with persons and insiders to whom the making of loans is prohibited or restricted should likewise be prohibited or restricted."

At least one other group besides Regional Trust read that as if it were going to be the drafting of the section in the act and said if you draft that section, officers who work for the company will not be able to be paid for those services.

Mr. Cassidy: I do not think that was intended, but it seems to me to be an entirely legitimate reading of the section, does it not?

Mr. Nigro: If you presume that wording would be in the statute, yes, it would be.

Mr. Cassidy: Okay.

Mr. Nigro: The next section they deal with is investments and loans. It is a general observation on the borrowing multiple.

As borrowing multiples are expanded, in their view investments and lending power should be narrowed. If you read the thrust of the white paper in general, it is possible to read it so that, as a company becomes more mature and demonstrates capability, responsibility and integrity, the borrowing multiple can be extended up to a level of 25. Presumably the commercial lending powers, for example, could be extended as well.

They feel if you start expanding the borrowing multiple and increasing the borrowing multiple, perhaps you should be watching the investment and lending power more carefully.

Mr. Cassidy: Did either of you do specific research on the question of the borrowing multiple? I gather from what the

bankers were saying the trust companies now have borrowing multiples that essentially are at the same levels as are currently being utilized by the banks, even though the banks could go higher.

Mr. Nigro: I have not done any research on that question, but it is interesting that the trust companies argue the opposite consistently.

On the question of third mortgages, which are prohibited or at least restricted under the proposals in the white paper, in section F, recommendation 4, Regional Trust says, "Third mortgages need not necessarily be sources of unexpected problems for trust companies." I presume if they are sufficiently examined, they would be acceptable investments.

Under investments and loans on page 8 of the brief, Regional Trust says: "For one thing, allowing real estate investments to 10 per cent of the book value of a corporation's assets does not minimize risk from this source. It sets a control which becomes looser the more risk there is in capital structure of the corporation, that is, borrowing ratio. The exposure should be related to borrowing base, not total assets."

On the question of commercial lending, number 7 of section F of the white paper, it says on page 11 of the white paper: "Loan and trust corporations should be entitled to engage in commercial lending up to a maximum of 15 per cent of the assets of the corporation with specific limits on loans to any one borrower or related group. Corporations engaging in commercial lending should segregate their commercial lending activities from their fiduciary functions."

On that recommendation they say that if, as implied on page 29 of the white paper, such loans would materially increase the risk concentration, the recommendation is dangerous and without foundation. "The proposal that issuing letters of credit and guarantees is not consistent with making commercial loans requires explanation." They are saying on the one hand, the white paper seems to be saying that commercial loans are more risky and so they wonder why that proposal would be increased, and on the other hand, if you are allowed to do commercial lending, then you should be able to issue letters of credit and guarantees.

A very similar point was raised in a number of the briefs we received.

Mr. Cassidy: I believe the bankers suggested the commercial lending could be as much as 30 per cent of assets if you combine what is being done now with what would be permitted. Did other people put numbers on that?

Mr. Nigro: No one put numbers on it. The bankers' point was that forms of lending that amount to mortgages are in fact commercial lending.

Mr. Cassidy: Which I think is true.

Mr. Nigro: On the need for an investment committee,

which is found in recommendation 3 of section G, management and organization, the Regional Trust Co. says: "There is no reason to believe that members of a board of directors will be either more technically competent or more ethically conscientious than competent managers. Directors elected by profit-motive shareholders may be motivated to place short-term profitability ahead of long-term stability." In other words, managers should make the investment decisions, not a subcommittee of the board of directors.

On the board of directors, once more it is said that it is inappropriate for the regulators to tell the directors what they ought to be thinking about; it should be sufficient for the regulators to inform the company's managements just what information is of interest to the regulators.

If you look at number 4 under part G, found at the bottom of page 11 of the white paper, I think they are referring to that recommendation: "The board of directors should be required to review specific financial data regularly to assist early detection of problems." They are of the view that the management can decide what financial data they would like to view, and the regulators should inform them only what is required.

As to the borrowing multiple, they say that merely to publish an authorized borrowing ratio, which is what the text on page 32 of the white paper says, without full explanation "could prove to be a major problem for a company that chooses to operate with a ratio of less than 25 to one. Members of the public might believe that the company is somehow less competent than others" with a higher multiple. That is on page 10 of their brief.

Mr. Cassidy: Which group is that?

Mr. Nigro: Regional Trust Co.

Mr. Cassidy: But in the case of the banks, their allowable multiple is available and their actual multiple is published. Is that not correct?

Mr. Nigro: I do not recall. I have to look at what the (inaudible) say.

Mr. Cassidy: From what the financial analyst who was here yesterday indicated, it is certainly widely available within the financial community, because they all do the numbers and they count them up very fast. In the banking community, therefore, a reduction in the multiple is maybe seen as a sign of greater financial strength, rather than the opposite.

Mr. Nigro: Possibly.

Under the question of borrowing costs and commissions, if you look at recommendation 2, Financial Standards and Controls, which is at the top of page 12 of the white paper, it reads: "The registrar should be entitled to prescribe maximum borrowing costs and commissions payable by a corporation from time to time in light of prevailing market conditions."

A number of companies commented on that. What Regional Trust says is that the process of setting deposit rates, etc., is only one of the many powers that can cause problems for a financial intermediary. It is also one of the more demanding tasks of financial management. If the registrar is to take over this task and thereby directly control certain day-to-day business operations, Ontario is proposing a radical restructuring of the loan and trust industry. They are suggesting that if this recommendation means the registrar is going to be regularly setting the cost of lending money, it is quite a radical recommendation.

Concerning the last two recommendations they deal with in their brief, the first deals with enforcement, which is on page 11 of their submission. It notes that while the text of this section suggests the act should be structured to ensure maximum self-policing, many management powers are taken away by the proposals in the financial standards and controls section. They suggest that there is a lack of internal consistency in the proposals in this regard. On one hand, they are advocating self-policing and, on the other hand, in their view, there is a great deal of internal regulation.

Finally, on the question of hearings and appeals, on page 37 of the text it is mentioned that the white paper wants to keep the December 1982 provisions in the act, which empower the registrar to take over the assets of the company or take over a company in certain circumstances. They suggest that the implications of empowering the cabinet to take possession and control of the Ontario assets of a subject company are serious and complicated for non-Ontario companies.

That is the end of the recommendations from Regional Trust.

Mr. Cassidy: Does the registrar have the power to intervene under the 1982 amendments with respect to the Ontario assets of extraprovincial trust companies?

Mr. Crosbie: If the assets are in Ontario, but not extraterritorially.

Mr. Cassidy: So you could take over the Ontario assets of Royal Trust, for example. Is that right?

Mr. Crosbie: We believe so, yes.

Mr. Cassidy: I see. You are not sure, but you think so.

Mr. Crosbie: These are constitutional issues that have never been tested.

Mr. Chairman: We presume.

Mr. Cassidy: You take first and then argue later.

Mr. Crosbie: I am sure if that were the issue, we would very carefully canvass the constitutional issue before we acted.

Mr. Cassidy: And then take first and wait for the response. Okay.

11:20 a.m.

Mr. Nigro: I have two more written submissions to go through. The first one is from Canada Trust Co. That is submission 18. They are generally in favour of legislative limitations on beneficial ownership. I believe a statement from their chairman was distributed yesterday when the Canadian Bankers' Association was here. In any event, they strongly advocate--

Mr. Breithaupt: Permit me to intervene briefly. It was not, of course, distributed by them. It just so happened that it arrived on my desk and I thought it an opportune time to put that into the hopper as well.

Mr. Chairman: It was on the radio too, by the way.

Mr. Breithaupt: Yes, a day or so before. I did not want you to think they had anything to do with it arriving at the committee.

Mr. Chairman: Do not confuse us with facts.

Mr. Nigro: In any event, they make that point very strongly in their opening comments. Starting on page 3 of their brief, they give specific recommendations on the white paper. Under section B, Administration, if you look at recommendations 2 and 3 on page 8 of the white paper, that basically covers the setting up of the commissioner of financial institutions and the financial advisory committee.

On that point, they say there is no need for an additional level of government consisting of a commissioner of financial institutions and a financial advisory committee. "Such an organization would create large, unnecessary additional expenditure for the province."

Mr. Chairman: Is their only reason for not wanting those that it would cost us more money to regulate?

Mr. Nigro: They also say it is unnecessary.

On recommendation 7, in the same section of the white paper on page 8, the section that deals with the separate investigative unit which reports to the assistant deputy minister, they say the investigative unit is a good idea but it should not be an entirely separate entity reporting directly to the assistant deputy minister. Both the registrar and superintendent of insurance should have their own investigative units. They agree with the idea of an investigative unit, but they would structure it somewhat differently.

Mr. Cassidy: They want two investigative units.

Mr. Chairman: They wanted to save us money earlier and now they want us to spend more money.

Mr. Cassidy: This is the FBI and the CIA. Is this is the Canada Trust brief?

Mr. Nigro: That is correct.

Mr. Cassidy: Did not the speech by the president of Canada Trust excoriate the government's proposals for overregulation?

Mr. Nigro: To be honest, in preparation for this, I did not have a chance to go through that brief very closely.

Mr. Cassidy: I read it; it was colourful. I recommend it to you. It seems to me the speech was rather contradicted by the brief from his own company.

Mr. Nigro: On page 4 of the brief, under Carrying on Business in Ontario, they deal with the question of incorporation. Recommendation 2 under that section, on page 8 of the white paper, says the issue of letters patent should still be a matter of discretion. On that point, the white paper says discretion would be exercised when people with high standards of integrity apply.

In the view of Canada Trust, it would be difficult to picture who might be capable of ensuring that only such persons would be issued with letters patent to establish a trust company. What they might be saying is that the criteria are not spelled out.

Mr. Renwick: I do not want you to think that my reaction to the world is not cold, hard logic and so on, but that guy at Canada Trust does not answer his mail, so it looks somewhat biased. We, of course, have in a number of statutes a really valid attempt to create an objective test and to get away from the subjective test with respect to that question of character and reputation. It is quite effective.

Mr. Nigro: Yes. On the question of minimal capital requirements, which is recommendation 4 in part C on page 9, Canada Trust notes that the minimal capital requirement for a loan company should be \$5 million rather than the \$2 million recommended. They say there is no justification for a lesser minimal capital of \$5 million for a loan corporation and \$10 million for a full-service trust company. They agree with the trust company recommendation but not the loan corporation recommendation.

Still dealing with section C of the white paper, the public convenience and other standards, on page 17 it is noted that the adequacy of financial resources would be subject to approval before a registrar would permit a new branch to be opened. There is no recommendation on that point, but it was picked up by a number of trust companies that submitted briefs.

In the view of Canada Trust, the decision to open a branch is a normal management decision based on many economic factors and not a decision for the registrar. They oppose the indication in the text of the white paper that the registrar would be involved in the question of deciding whether a trust company would be permitted to open a branch.

Mr. Breithaupt: I had presumed the registrar's involvement really was only in looking at the pattern of growth and commitment for a company for its early years--perhaps the first five. I did not think there was an attitude that thereafter, once the company seemed to be on its feet and meeting its plans, there would be an overseeing of further branch development. Am I wrong in that? Was this to continue into the foreseeable future, or was it only the first-year plan that really got your interest?

Mr. Chairman: Would the ministry make some comments please?

Mr. Crosbie: We really were basing our comments on our perception that opening branch offices could be a very expensive operation. Presumably with a company in the circumstances you describe, one that is well established and on its feet, the opening of a branch office may not present any problems and the registrar would give it quick approval.

For another company that might have been in business just as long and had not matured or had not succeeded as well, opening a branch office might put it over the edge of its financial commitments. If the function of the regulator is to prevent companies from operating under economic conditions that may be prejudicial to the depositors, then wisdom would say not to open a new office.

Mr. Breithaupt: I can see that wisdom would say not to open a new full-service branch, but as to opening a second floor--

Mr. Crosbie: A walkup with one person?

Mr. Breithaupt: There may be a situation where a company wants to get involved in registered retirement savings plan opportunities, or perhaps it wants to be near the Bay Street scene when its head office is in Oakville or its two other branches or whatever. In situations like those, that opportunity is hardly likely to be anything more than a benefit.

I agree that a new full-service branch for a three-year-old company likely will cost \$100,000 and is just an imprudent thing to do and should be observed upon by the registrar. That would cause me no problem at all. But I was wondering for how long this was anticipated. I did not gather the sense--I must have missed it--that this was going to be an ongoing overview by the registrar from now on.

Mr. Crosbie: The case you just described highlights perfectly the problem we had in writing the white paper and

responding to the allegations of overregulation. If I could restate what you have just said, I would say there are circumstances in which the opening of an office may be too much. If they go to a full-service office, then the registrar should have an overview, should examine and presumably should approve it. But there are other circumstances where he should not become involved because it is only a minor function. It is only a few dollars, comparatively speaking, and does not need regulation.

That question continues over time. I do not think there is any point when we can say we are going to disregard the financial consequences of what a company is doing because it has been in business for five or 10 years. The issue we are dealing with--

Mr. Breithaupt: I gathered that was more or less the cutoff, and then whether--

11:30 a.m.

Mr. Crosbie: No. We could not see how time has any relation to a regulatory process. If you are trying to prevent an unsatisfactory practice, whenever it arises you have to deal with it.

Mr. Breithaupt: I understand that is your theme now. I was not aware that was going to be the ongoing idea. I still thought it was more or less tied to the early years. I see I was incorrect.

Mr. Chairman: Just to follow up on that, are you basically saying we are giving the registrar discretionary power to judge which route they should go as of the full-service branch or just a partial branch?

Mr. Crosbie: Subject to appeal, yes.

Mr. Chairman: That is fine. I have no problem with that.

Mr. Nigro: The Canada Trust Co., as did several other trust companies I have mentioned, picked up on the paragraph on page 18 of the white paper, on which there is no recommendation, where it says, "The power to incorporate or acquire mutual funds and mutual fund sales and management corporations be eliminated."

They say, "This proposal seems quite inappropriate for trust companies whose primary purpose is the administration of trust funds." The agency and estate services of such a company "should be available to less affluent individuals by use of mutual funds investments."

Mr. Breithaupt: I presume that rather than only concern ourselves necessarily with the 60 or so actual recommendations as they appear from time to time, we are also going to be observing upon perhaps half a dozen other paragraphs referred to so that, while they are not recommendations, at least they are going to be in our summary since they have concerned someone and have been observed upon.

Mr. Chairman: Right.

Mr. Breithaupt: We should at least know that as we go through.

Mr. Chairman: I believe that will be highlighted.

Mr. Nigro: On the question of affiliates, if you look at recommendation 8 on page 9, it says, "The maximum investment by a loan or trust corporation in another corporation, other than a subsidiary, should be reduced from 20 per cent to 10 per cent...."

On that point, Canada Trust notes that it opposes this recommendation. Federal legislation permits a level of up to 30 per cent investment "in any one corporation other than the subsidiary," and varying authorized levels "would make a national company's position intolerable."

Further, "a limitation at any less than 20 per cent would not permit equity accounting." It is incongruous that the draft proposals "limit trust and loan investments in another company to 10 per cent" and permit a holding company to own "an unlimited percentage of a trust and loan company."

Mr. Breithaupt: May I ask the deputy or Mr. Thompson why there is a need to have rules different to the federal 30 per cent pattern? Is there some advantage you expect from this, or would it be better to have a constant national pattern since, no doubt, Ontario's view will be considered by other provinces as well?

Mr. Crosbie: I think it is highly desirable to have a similar pattern. As I mentioned earlier, one of the risks we run in being at a higher level or tougher--however you want to characterize it--in our regulatory requirements is we make any company subject to them less competitive than a company in a jurisdiction that does not have that standard. It would be true that if there were federal companies that could borrow at a 30 per cent ratio and provincial ones at 10 per cent, it would be a disadvantage. I believe that 10 per cent was the federal white paper recommendation.

Mr. Thompson: I think the theory really is to maintain a much more diversified investment portfolio; in other words, it is a "do not put all your eggs in one basket" theory.

Mr. Breithaupt: That should be the preferred pattern.

Mr. Crosbie: I think that is consistent with the idea that if you could get enough clearly stated legislative standards, the amount of bureaucratic intervention could be lessened. This is one of the standards the federal government was recommending to reduce the risk inherent in operating an investment company.

Mr. Cassidy: Would this reduction of 10 per cent apply within the basket clause as well?

Mr. Thompson: Yes, it does. It is an overriding investment. In other words, you cannot put X per cent up as an authorized investment and drop the rest of it down into the basket clause.

Mr. Cassidy: Is it the practice of those companies now to have subsidiaries of which they have much more than 20 per cent or 10 per cent?

Mr. Thompson: Regulation 591 governs it. The theory of the act, going back to this restriction of 10 per cent, is basically to enhance the view that the trust company should be a passive investor in the sense that it is investing for the security and profitability of the investment and not for the purposes of acquiring control, etc., or any other purpose that might exist.

Under the regulation if they have a subsidiary company then they must have more than 50 per cent of the subsidiary company, except in the case of a real estate corporation, which was mentioned elsewhere in the white paper. But the concept really has been at the present time no more than 20 per cent in any one corporation.

Interjection.

Mr. Thompson: Yes. There is 20 per cent there, and if you are a permitted subsidiary, then you must go beyond 50 per cent; in other words, you must have control of the subsidiary.

Mr. Cassidy: You either have a bit or a lot, is that right?

Mr. Thompson: Yes.

Mr. Cassidy: What is a permitted subsidiary?

Mr. Thompson: The ones that are enumerated under the act. We have heard about the mutual fund one. I would like to expand a little bit on that, because there seems to be a misconception in the papers we are seeing that we are trying to take something away. The fact of the matter is that the mutual fund subsidiary has not been used by any of the trust companies, because directly within the company, by setting up a declaration of trust or something, they can operate a type of pooled fund. In our review of it we felt that was simply a housekeeping thing, because it seemed more economical, cheaper and more controlled to do it right within the trust company.

Other types of permitted subsidiaries would be to operate a foreign trust company, but in regulation 591 you will see that there is a control on the amount of money you can drop down from the trust company into the subsidiary to finance it by way of capitalization, and it is brought up into the financial statement of the trust company.

Mr. Crosbie: I think that is a very important distinction to make. With this 10 per cent or 20 per cent rule as

it is now you do not really require the trust company to account in any way for the financial activities of the company it has invested in. One might look at it in terms of the market value of the share, but apart from that you are not interested. However, when you get into an investment in a subsidiary, then the activities of the subsidiary must be reflected in the financial statement of the trust company.

Mr. Breithaupt: It would have to be totally accounted for.

Mr. Crosbie: Yes.

Mr. Cassidy: What section is it under? I am afraid your explanation was difficult to follow, and the act is equally difficult to follow.

Mr. MacQuarrie: Regulation 591 is very clear.

Mr. Crosbie: I will go over it again. If you are talking about the present rule of 20 per cent investment, you could invest 20 per cent in some other company and it is just a path of investment.

Mr. Cassidy: What are the permitted companies in which you can invest?

Mr. Thompson: That is the other side, the quality type of investment. It must be a company that has a dividend earning record of a certain percentage over a term of five years, etc., so there is a quality test there as to what shares you can invest in.

Mr. Cassidy: That means that if the trust company wants to have a subsidiary that is just managing its real estate, for example, they cannot do it?

Mr. Thompson: Yes.

Mr. Crosbie: Real estate is a permitted subsidiary.

Mr. Thompson: Yes.

Mr. Cassidy: But it has to meet those earnings tests, the dividend test.

Mr. Crosbie: No.

Mr. Thompson: No. This comes out, and if I can--

11:40 a.m.

Mr. Crosbie: The 20 per cent rule applies to passive investments in companies that meet certain performance standards and have shown a positive earning of a certain percentage for a number of years. Where you invest in those types of companies, you have invested to earn the income. A trust company is not accountable for what that other company does.

Mr. Cassidy: What is the section?

Mr. Thompson: Section 183 would give you the type of companies they can invest in.

Mr. Cassidy: Where they are allowed to have majority control, is that right?

Mr. Thompson: Yes. In fact, it is required; that is page 124, section 183.

Mr. Nigro: On limitations on ownership, which Canada Trust was quite concerned with, they say, "An absolute limit on the ownership of loan and trust companies should be imposed and a sound, sensible limit might be up to 20 per cent." Absolute ownership limitation is the cheapest and most expeditious way of avoiding or minimizing conflicts of interest. "Companies with concentrated ownership at present could be grandfathered on a generous basis for up to 20 years."

Continuing with conflicts of interest and new restrictions and limitations, point 8 on "Conflicts of Interest," which is on page 11 at the top, says, "Corporations should be prohibited from purchasing or acquiring goods or management services or paying finders' fees to any affiliated corporation or holding corporation, except with the prior approval of the registrar." On that point, they say the sale of assets between a parent and subsidiary at fair market value should be permitted.

As for the additional powers of the registrar, Canada Trust suggests it is impractical to require that copies of the board and committee meetings be filed with the registrar. At page 27 of the white paper, that is found in the text. The registrar's representatives should examine these materials "at the time of periodic examinations in the same manner as the auditors and the examiners of Revenue Canada and the Department of Insurance of Canada." Those points are made on page 7 of the brief.

On the question of business and powers, on borrowing, deposits and trust funds, considered on page 8 of their brief, Canada Trust says that deposits are not a trust. On page 28 of the white paper--it is not in any of the recommendations, as I pointed out earlier--the trustee-trust beneficiary relationship is maintained in the white paper.

They say deposits are not a trust and handling them in this way is confusing and misleading. Maintaining the trustee-trust beneficiary relationship creates difficulty in accounting procedures and may be very onerous should the federal government abolish the relationship for federally incorporated companies. I believe the federal white paper did suggest that this relationship be abolished.

On investments and loans, recommendation 6, which begins at the end of the first column on page 11, says, "Loan and trust corporations should not be permitted to own directly or indirectly rural property having an aggregate value in excess of 10 per cent of the book value of the assets of the corporation."

In Canada Trust's view this proposed maximum level of real estate holdings is too high and should be related to capital and reserves rather than book value of assets. A maximum limit equal to 75 per cent of capital and assets is appropriate.

Mr. Cassidy: Can I ask a question of the registrar on that? Is there any limit right now in terms of ownership of real estate by trust companies?

Mr. Thompson: Yes, there is. That would be up around the 20 per cent limit. We are saying, let us keep this down.

Mr. Cassidy: You are saying reduce it to 10 per cent?

Mr. Thompson: Yes.

Mr. Cassidy: In the case of the company we have been looking at, to what level would its ownership of real estate rise? Did you ever get a number on that?

Mr. Thompson: I do not think that was a factor.

Mr. Cassidy: That is because they were basically transferring ownership of companies rather than a directory of real estate, is that right?

Mr. Thompson: Yes. The ownership of real estate in the trust company per se was not a factor in that.

Mr. T. P. Reid: Just to follow up, was the Greymac building downtown not a factor in part of the problem; that there were mortgages on that and inflation--

Mr. Thompson: They were not the owners of that building.

Mr. T. P. Reid: They were not?

Mr. Thompson: No.

Interjection.

Mr. Thompson: Time will tell.

Mr. T. P. Reid: Greymac Trust did not own that building.

Mr. Thompson: That is right, regardless of the sign in front.

Mr. Nigro: On the question of commercial lending, Canada Trust made two proposals. First, they suggest the proposal on commercial lending is too restrictive, that there should be no limit on commercial lending; but if one is deemed to be necessary, it should be not less than 50 per cent of the total assets. They make that point on page 9.

As to the restrictions on loaning up to 15 per cent of the corporation's borrowing base to any one borrower, in their view that is too restrictive; a 25 per cent limitation would be more appropriate.

On the question of management and organization, under "1. Directors and Officers" in part G of the recommendations on page 10, it talks about the notification provisions in the act and the text of the white paper goes on at greater length on the requirements.

In the view of Canada Trust, the notification requirements are impractical. An annual or semiannual review by the registrar should be adequate. "Prior approval for the appointment of the chief executive officer and chief financial officer should not be required. Such appointments are the prerogative of the board of directors and report of such appointments to the registrar should be sufficient."

On the question of the borrowing multiples in the financial standards section, they suggested a maximum borrowing multiple is unnecessary. However, if one is to be required, it should be discretionary to a maximum of 30 times.

The last two recommendations they make on the question of borrowing costs I read earlier. The second recommendation is at the top of page 12. They say the registrar should not have the authority to limit borrowing costs and commissions, that it is imperative such decisions be left with management to allow for periodic adjustments in the competitive market.

Finally, in "Financial Records and Reports," on the question of reporting, they say it would be advisable to make public quarterly financial reporting compulsory, they are in favour of public reporting, obviously.

Mr. T. P. Reid: Do they mean by public reporting something like the banks do, taking out an ad in the paper and saying it is their balance sheet?

Mr. Nigro: All they said, on page 12 of their brief, was, "It is suggested that it might be advisable to make public quarterly financial reporting compulsory." What they mean by "public" is not indicated. Whether they mean the Ontario Gazette or a newspaper, I am not sure.

Mr. Cassidy: What is the borrowing base of the corporation? They said the commercial loan should be no more than 25 per cent of the borrowing base.

Mr. Crosbie: What is the definition of a borrowing base?

Mr. Cassidy: Yes.

Mr. Crosbie: It is very complicated, but simply put it is the difference between assets and liabilities.

Mr. Cassidy: So it is the shareholders' equity; is that right?

Mr. Thompson: There are other things, such as money they would be retaining, income tax, the value they have for a claim on income tax that has been overpaid and all sorts of things such as

that. Earnings that have been accumulated and not paid out could be part of that.

Mr. Cassidy: That is what I mean. It is shares plus retained earnings.

Mr. Thompson: Yes.

Mr. Cassidy: Does the ministry have any comment then as to the question of a 15 per cent borrowing base or 25 per cent or whatever? Some of the mortgage loans that went out were zillions of times the borrowing base of companies like Greymac.

Mr. T. P. Reid: I think we are confusing apples and oranges when we are talking about commercial as opposed to mortgage.

Mr. Cassidy: That is true, yes.

Do you have some comment then on the question as to whether there should be restrictions on the amount that any mortgage may be, standing in relation to the borrowing base of--

Mr. Crosbie: Such as, any single loan?

Mr. Cassidy: That is right because even the Daon loan, for example, was probably equal to about 75 per cent of Crown's borrowing base, was it not?

Mr. Thompson: It was more. It was over 100 per cent; that was the horror of it, really.

Interjection.

11:50 a.m.

Mr. Thompson: Yes. Let me go back and see if I can be--you are getting into commercial lending and corporate lending as well that I think has to come out to it, but the 20 per cent limitation of investment in any one corporation or entity is an overriding factor that exists to control how much they can put in any transaction.

A mortgage loan to a corporation can be an authorized loan, but it is still subject to this overriding factor that no more than 20 per cent shall go into one transaction. Now we are proposing to reduce that to 10 per cent. I hope I have not confused you.

Mr. Cassidy: You sure have.

Mr. Thompson: Maybe I can come around the other way, then. If you are making a mortgage loan on real estate to a corporation and there is a large building on it, you have to meet the quality test of up to 75 per cent of value. The quality may be there to make the loan, but the company must go back and look at its own capacity as to the quantity they can put into that particular property.

Mr. Cassidy: Is that the current rule?

Mr. Thompson: Yes.

Mr. Cassidy: What is the current rule?

Mr. Thompson: Twenty per cent.

Mr. Cassidy: Twenty per cent of what?

Mr. Thompson: They cannot invest more than 20 per cent of their assets in that particular mortgage loan.

Mr. T. P. Reid: So if they have got \$1,000 in assets they cannot take a mortgage for more than \$200?

Mr. Thompson: That is right.

Mr. Cassidy: That means that under your regulations, Crown Trust was technically capable of making a loan in the order of \$200 million if it had about \$1 billion in assets. Is that correct? They showed \$1 billion in assets.

Interjections.

Mr. Chairman: We are getting into specifics again, Mr. Cassidy.

Mr. Mitchell: As you say, we have had pretty good discussion here, but I think that question may well be directed to the registrar at this ongoing--78-some cases are scheduled, are they not? I understand the question but I do not think it is one that Mr. Thompson could really be logically expected to answer.

Mr. Cassidy: Mr. Chairman, perhaps just in terms of making notes, it seems to me the point Canada Trust referred to was the restriction on commercial lending relative to the borrowing base. I do not know if there is even a recommendation, but the question about lending on mortgages in proportion to a trust company's assets I think should be raised and considered by the committee.

Mr. T. P. Reid: Maybe it would help if the registrar explained the difference between a commercial loan and a mortgage, because they are two different things.

Mr. Cassidy: Of course they are. I know that, yes. I am just saying there is a separate issue in the recommendation in the white paper with respect to the proportion of a corporate company's assets which can be loaned on a mortgage.

Mr. Chairman: I thought we were going down to 10 per cent instead of 20 per cent. We are reducing or allowing a company to go into a heavier--

Mr. T. P. Reid: I think where the confusion comes in is that you can lend up to 75 per cent of the value of the property.

Mr. Chairman: Provided you--

Mr. T. P. Reid: But you can only lend up to 20 per cent of your assets, so the two may not match. If the building is worth \$1,000 you may lend up to \$750; but if your base is only \$100, you can only lend \$20.

Mr. Chairman: That is right. In other words, if you used it in other mortgages you have not got enough to cover the whole building.

Mr. Thompson: I think I have done a fine job of confusing you on it. Paid-up capital is the percentage there that we are talking about, not its whole assets.

Mr. Gillies: Could I just ask the registrar or the deputy--

Mr. T. P. Reid: --paid-up capital and that is the basis--

Mr. Crosbie: Not necessarily the paid-up capital. You could have \$10 million paid up, but it could be impaired by \$2 million, so you only have \$8 million on a borrowing base. It is the borrowing base--sometimes your lending ratio determines how many loans you can make.

Mr. T. P. Reid: If you make 10 others over here, then your base is not the same obviously.

Mr. Cassidy: I am having trouble with this. What I am hearing, Mr. Chairman, is--I sound like a regulator, but no recommendation has been specifically made with respect to the size of mortgage loans that can be made, despite the fact this was very clearly a very serious problem with respect to the companies we have been discussing, and the 20 per cent rule effectively means that up to four or even six times the borrowing base of a company could be lent on one single mortgage.

Mr. Thompson: No, I am sorry, I confused you on that. What we are saying in the white paper is it ought to be 10 per cent.

Mr. Cassidy: Where is that in the white paper?

Mr. Chairman: Right at the bottom of page 11. It says: "Loan and trust corporations should not be permitted to own directly or indirectly real property having an aggregate value of excess of 10 per cent of the book value of the assets of the corporation."

Mr. Cassidy: But where does it refer to the value of individual mortgage loans and the proportion they can be of the value of the assets of the corporation?

Mr. Thompson: That is another test, and that it is where it is difficult. That is an aggregate figure in the sense that no company should put more than 10 per cent of its total assets in the aggregate and all that type of investment. There are other

provisions of the act that restrict the amount invested by any one person, and they would apply.

Mr. Cassidy: Where is that in the white paper, please.

Mr. Crosbie: Page 9, paragraph 8.

Mr. Cassidy: That is where you are talking about 10 per cent or else you have to have it over 50 per cent. I still do not see where there is a restriction on a mortgage like the \$200 million in the Crown Trust case. Where is there any action with respect to that? Where is there a restriction that would prevent a very substantial portion of the assets of a trust company going into a one mortgage loan far in excess of its borrowing base?

Mr. Thompson: All right. Now we are into another test.

Mr. Cassidy: It is the same one I asked about 10 minutes ago.

Mr. Thompson: We were talking aggregates, total amounts on a spread on a portfolio; now we are talking about an individual investment or a loan to a particular corporation.

Mr. Cassidy: I am sorry, but I have been asking about that for 10 minutes.

Mr. Thompson: I am trying.

Mr. Cassidy: I am asking you where it is.

Mr. Thompson: Section 185 of the act will give you the limitations. You are into the 15 per cent of its own paid-up capital stock and reserve funds.

Mr. Cassidy: Is a mortgage a security?

Mr. Thompson: Yes.

Mr. Cassidy: How then would Crown, or some company like Crown, have been able to make a \$15-million loan when Mr. Crosbie says that is equal to 100 per cent?

Mr. Chairman: Mr. Cassidy, we are getting into specifics. You are playing games again.

Mr. Cassidy: I am not playing games.

Mr. Chairman: Yes, we are getting into specifics. Let us keep it on a general level.

12 noon

Mr. Cassidy: I am very puzzled. It is an area we have not explored. Perhaps I can ask this. In future will a company be able to make a loan equivalent to two or three times its borrowing base on mortgage, provided it was within 75 per cent of value, according to the white paper?

Mr. T. P. Reid: On one mortgage?

Mr. Crosbie: No.

Mr. Cassidy: Where is that contained, because apparently this was--

Mr. Crosbie: The reason I am avoiding answering is there is an argument about it. After all, these are the companies we have acted against, so obviously we did not find what they did acceptable. For you to characterize it as something permitted under the act may not be accurate either. I would like to keep away from that.

Mr. Cassidy: I think what I am asking is that the--

Mr. Crosbie: Let me give you another hypothetical situation. If somebody had a capacity to lend \$2 million to any one investor and the investor--at least any property, and that property was capable of being subdivided into 10 parcels and each parcel was worth \$2 million, then a \$20-million loan in aggregate could be made on that property, assuming each of those parcels was owned by a different person.

Mr. Cassidy: A syndication kind of thing, is that right?

Mr. Crosbie: Not necessarily syndication; separate sales.

Mr. Cassidy: I will leave it at that. Perhaps the issue can be addressed when we get--

Mr. Nigro: The final brief I have in front of me is brief 44 from the Manufacturers Life Insurance Co. It describes itself as a major shareholder in one of Canada's largest trust companies.

Mr. T. P. Reid: Nonvoting.

Mr. Nigro: On the minimum capital requirement, the company comes up with a different formula for calculating minimum capital to incorporate. The minimum capital requirement should be re-examined. "The percentage capital requirement," such as requiring a minimum capital and surplus of four per cent plus a further sum, "provides a much more reasonable basis to judge when supervisory curtailment...is required."

The next point they raise on page 4 of their brief deals with the maximum investment limitations found in the white paper. The maximum investment limitation by a trust or loan company should be re-examined. A financial intermediary should be free to invest in any investment it feels is reasonable.

"However, the total investment in any one enterprise should be restricted to a proportion of assets or a proportion of capital of the trust company. For example, it might be stipulated that no more than five per cent of the assets of a company might be loaned

to any one borrower or related group without explicit regulatory approval and no more than 15 per cent with approval."

These are getting into some fairly technical points in the act.

The third recommendation Manufacturers Life makes says there should be a requirement that there "be appointed to the board of directors, directors representing the depositors' interest." That is on page 5 of their brief.

They say there should be no limitation on ownership of trust companies.

The final recommendation they make says, "The position of registrar should not have the significantly broadened and far-reaching powers suggested in the white paper," but they do go on to note that "when solvency standards are breached," etc., the registrar should have far-reaching standards to intervene.

Those are the recommendations arising from that brief.

Mr. Chairman: Before we go on, I have a letter here that I would like the clerk to distribute to the members of the committee. I think we should read it into the record as it has to do with the Municipal Savings and Loan Corp. I think Mr. MacQuarrie asked a question a few days ago.

It is addressed to the committee and it says:

"Dear Sir:

"It has come to our attention that our corporation's and the writer's names were added to a brief submitted by an organization known as the Loan Companies Association of Ontario.

"The purpose of this letter is to indicate to you and to the members of the committee that no one in our corporation had any input or discussion with anyone about the said brief, nor was our permission given for our corporation or the writer's name to be added to that brief.

"We therefore wish formally to dissociate ourselves from the comments and recommendations made in the brief of the Loan Companies Association of Ontario.

"Our wholly-owned subsidiary, the Municipal Trust Co., is a member of the Trust Companies Association of Canada and our position is that our views have been expressed only from the Trust Companies Association of Canada and its president, Mr. William Potter.

"We might explain that we joined this other junior association for two purposes:

"(a) To make contact with some of the smaller companies in our industry; and

"(b) To encourage some of them in due course to join the Trust Companies Association of Canada.

"It was never our intention to allow our name to be used as a signatory to their brief.

"We trust this clarifies the matter.

"Yours very truly, Maxwell L. Rotstein, president."

We will not start Peggy's presentation until two o'clock. This would be a good time to adjourn. The committee is adjourned until two o'clock this afternoon.

The committee recessed at 12:06 p.m.

Lacking J-30, 1984.

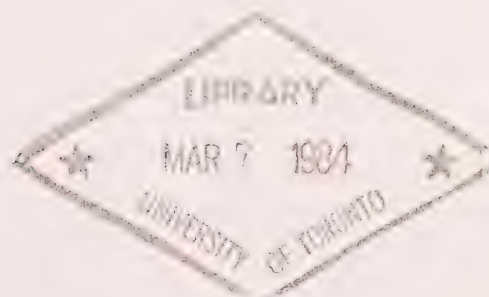
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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO

TUESDAY, FEBRUARY 28, 1984

Morning sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Boudria, D. (Prescott-Russell L)
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Kerrio, V. G. (Niagara Falls L)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
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Taylor, J. A. (Prince Edward-Lennox PC)

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Hodgson, W. (York North PC) for Mr. Eves
Van Horne, R. G. (London North L) for Mr. Kerrio

Clerk: Arnott, D.

Staff: Mooney, P., Researcher, Legislative Library
Nigro, A., Researcher, Legislative Library

From the Ministry of Consumer and Commercial Relations:

Crosbie, D. A., Deputy Minister

Thompson, M. A., Superintendent of Insurance and Registrar of
Loan and Trust Corporations, Financial Institutions Division

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, February 28, 1984

The committee met at 10:05 a.m. in committee room 1.

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO
(continued)

Mr. Chairman: I see a quorum. Before we go to the business at hand, there is a bit of communication we should make the committee aware of. We have received a letter from HFC Trust in regard to its appearance this coming Wednesday, which would be tomorrow. It has decided not to appear.

In its stead on Wednesday morning we will have the Investment Funds Institute of Canada, exhibit 40. Mr. Keith Douglas, the president, will be with us. They evidently asked to appear in front of the committee and we somehow miscommunicated with them. We have corrected that situation and they will be here with us tomorrow morning.

Mr. Renwick: They are going to be here after all.

Mr. Chairman: Yes. The Investment Funds Institute of Canada will be coming in place of HFC Trust.

Mr. Renwick: I see.

Mr. Chairman: We also have quite a lengthy letter from A. Rendall Dick of the Law Society of Upper Canada, stating the problems in not being able to be here. We will photocopy the letter so each of the members can have a copy.

Mr. Renwick: If it is from Rendall Dick, it will be lengthy.

Interjection.

Mr. Renwick: When they want to confuse somebody, they always write a brief.

Interjection.

Mr. J. A. Taylor: It should not be too difficult. It need not have been that long.

Mr. Chairman: I think that takes us to the business at hand.

We have in front of us the Summary of Recommendations Made Within Briefs and Presentations on the Proposals for Revision of the Loan and Trust Corporations Legislation and Administration in Ontario.

As the researchers indicated to us on Thursday, it is done basically in sections under administration, carrying on business in Ontario, limitations on ownership and transfer of shares, conflict of interest, business and powers, management and organization, financial standards and controls, financial records and reports, enforcement, hearings and appeals, and general. It takes 11 categories from B to L.

10:10 a.m.

I think we had agreed we would start with the B category this morning, page B-1. The B section takes in administration. The researchers have grouped all the groups that appeared in front of us that had some concerns with the section. "In the future, there should be a more active approach to regulating loan and trust corporations in Ontario in order to anticipate problems." A number of groups came before us, and you will notice what their recommendations are in this particular section.

Mr. J. A. Taylor: Under administration?

Mr. Chairman: Yes.

Mr. J. A. Taylor: Have any of the matters advocated in the white paper with regard to administration been implemented? It might be helpful to know that.

Mr. Crosbie: The significant administrative changes, as you are aware, are the appointment of the new assistant deputy minister, and we are in the process of implementing the early warning system.

We are doing the sort of administrative background work in preparing organizational charts and looking at additional resource needs in the division, but apart from that, there has been no change yet. We are still waiting for the recommendations of the committee on the procedural changes which might be reflected in organization.

Mr. J. A. Taylor: Does that involve any additional personnel, with the exception of the new assistant deputy minister?

Mr. Crosbie: No additional--

Mr. J. A. Taylor: I am just wondering if personnel were being put in place, but possibly with their functions not assigned until the recommendations come forward.

Mr. Crosbie: We are in the process of obtaining Management Board approval of funding and complement increase for that purpose, but they have not yet been put in place. Nothing has happened since the white paper has come out.

Mr. Breithaupt: Mr. Chairman, I am sorry I was just a few moments late this morning. Might I inquire as to what your intention is? Are you planning just to go through generally on a first run to see the areas in which there are perhaps points of discussion?

If that were the case, I would think if we were taken through the blocks we would be able then to find out if there are some things that are going to be a bit of a stumbling block or whether we can clear up numbers of these where there are very few comments to start with. Perhaps you had commented on that before I came in. If you did, I apologize for raising it.

Mr. Chairman: I thought we had agreed on Thursday that we would go through section by section.

Mr. Breithaupt: Without necessarily reaching any hard and fast decision on any one point?

Mr. Chairman: That is right.

Mr. Breithaupt: That is fine, great. It is more particularly of value because my colleague Mr. Van Horne is here replacing Mr. Reid, whose public accounts committee is meeting. I think just an overview that way would be of assistance to him as he--

Mr. Renwick: If we gave Mr. Van Horne everything we have received to date, perhaps he could read it during the lunch hour.

Interjection.

Mr. Van Horne: I would be more pleased if you would give me some of your time at lunch and some of your money, too.

Mr. Chairman: You would like a quick summation, would you? It is not that easy.

Mr. Renwick: Does the new regulatory direction, including the creation of these offices, lend itself to giving us at this time a chart of the existing organization of the area covered by this recommendation and a chart with respect to the proposed changes?

It would be of assistance to me, and maybe the ministry can provide that, Mr. Thompson. It might very well be a useful visual aid to anyone who might happen at a future date to read our report.

Is it there? If it is provided, I do not want to ask for it to be duplicated. Which page is that on?

Mr. Mitchell: On page 3.

Mr. Renwick: This is the existing structure. Is that correct?

Mr. Crosbie: Subject only to the change of the ADM. I think this chart would be accurate if the executive director of financial institutions was the ADM, financial institutions.

Mr. Renwick: Let me ask it another way. Is this the way the branch of the ministry was organized at the end of 1983 or 1982?

Mr. Crosbie: Yes.

Mr. Renwick: It does not reflect the changes proposed?

Mr. Crosbie: That is correct.

Mr. Renwick: Could we have one reflecting the changes proposed?

Mr. Crosbie: I think we can get that chart. The only reason I am hesitating, Mr. Renwick, is we have proposals before Management Board and we may not get exactly what we asked for.

Mr. Renwick: I understand that, but I was thinking you had a chart that would reflect what you proposed in the white paper. That is all I ask.

Mr. Crosbie: Yes, we can reflect the white paper. If we put it on that basis, fine.

Mr. Renwick: I think it would be helpful if you would add a note to the effect that the proposals are before Management Board so no one will be misled, or whatever you want to say about them.

Mr. Boudria: Will the changes you propose in the white paper, in fact, achieve the opinion as set forth in exhibit 50? Will that not be close to the same thing?

Mr. Crosbie: No, not necessarily. I do not think the two necessarily relate. This is a technique, if you will, for creating liaison between companies and the ministry.

Mr. Boudria: But would you have the staff component in order to do it in that fashion?

Mr. Crosbie: Well, you see, we would not have two separate people for each company.

Mr. Boudria: I would think not.

Mr. Crosbie: For argument's sake, you might say that one out of two persons in every case might be the registrar and the other one might be the inspector who has been assigned that area. If we were to implement that recommendation, I think that is probably the way we would do it.

I do not know that this is a necessary recommendation. I think if the people are familiar with the ministry, there is no problem in getting in touch with the registrar, or the ADM, for that matter.

Mr. Boudria: I suppose the reason this was recommended, if I can recall what was said, was to ensure that contact was easy flowing and continuous. It was not to be a case of trying to reach an official who was very busy this week with another trust company and that was going to keep him tied up for the next four weeks, type of thing, and maybe we should call back next month. That, I gather, was the concern.

Mr. Crosbie: I think our proposals on increased complement are designed to give us a greater capacity to deal with inquiries from companies, but all I am suggesting is I think what we are proposing would accomplish the same end without going to the formality of saying, "Here are the two persons you shall deal with."

Mr. Breithaupt: I think what you are likely to end up with is a mechanism for dealing with the problem, but you are not necessarily going to have two named persons for each company at all times.

Mr. Crosbie: Exactly, yes.

10:20 a.m.

Mr. Breithaupt: I presume the reason they had mentioned two was that, in case their concern is not listened to, they have a second person they can jog and, as a result, something might be discussed.

Mr. Crosbie: Yes, such as vacations and illnesses. The chance of one being away, I guess, is very real.

Mr. Mitchell: May I go back to the organization chart first of all, Mr. Chairman? I am somewhat confused by the organization chart shown on page 3. I believe the deputy minister said the top spot identified as executive director of financial will be the ADM. Is that right?

Mr. Crosbie: Yes, that was the recommendation in the white paper. It was that the executive director of financial institutions be replaced by the ADM. That will also result in some other organizational changes.

Mr. Mitchell: The registrar then would appear under that?

Mr. Crosbie: Yes.

Mr. Mitchell: Then the rest of the chart would flow with what other modifications are made?

Mr. Crosbie: Yes. There would be changes in titles, because the registrar reporting to the ADM then would have the loan and trust structure underneath him. There are some other basic changes. We were talking about reorganization of the inspection duties and where they report. That changes, and the organization of insurance services would change as well.

I think we had better get you the other chart to show it. It describes it rather better.

Mr. Mitchell: I think it raises that very question--I can quite appreciate that. In this chart, the executive director of financial institutions is Mr. Thompson. Am I right?

Mr. Crosbie: Yes.

Mr. Mitchell: But now the assistant deputy minister, who has been appointed by the minister, will be reporting directly to him but basically will be concerned with the other areas. However, there will be modification to the new titles and there will be new areas of responsibility. That will still be the flow. Am I correct?

Mr. Crosbie: I think so. I think we had better get the chart because I am not quite sure what you are saying.

Mr. Mitchell: No, that is fine.

Mr. Boudria: May I also suggest that we get for this afternoon a copy of the chart that comes with the annual report showing the existing top ranks of the ministry? We do not have what is missing between here and the minister to look at right now.

Mr. Crosbie: Very simply, at this time that large arrow at the top points to the deputy minister. So we only have two stages.

Mr. Chairman: Is there any further comment on B-1?

Mr. Renwick: Could we wait until we get the chart and have a look at it? I am always a little concerned when there is a disruption of the traditional organization of a ministry. This provides that somebody called the commissioner will be accountable directly to the Minister of Consumer and Commercial Relations and is altogether different from the traditional concept of deputy minister and assistant deputy minister. So perhaps we could defer that structural discussion until we actually see the chart.

Mr. Mitchell: Mr. Renwick has suggested we defer the discussions under B. Am I correct on that? All of B?

Mr. Renwick: Yes. I am quite happy to pick up the discussion on the financial adviser--well, no, let us wait until we see the chart.

Mr. Breithaupt: We have looked at B-1--this first thing. The only point that was made in that area is going to be attended to, so it can be checked off and we can go on to the next. If we are first able to sort out the comments that are made on the points and say they are answered, we really do not necessarily have anything further to do on those points.

Mr. Chairman: I agree.

Mr. J. A. Taylor: I think the administration might in some way be dependent upon the duties they are charged with performing. It strikes me that if you are going to keep a very close watch on these institutions, if you are going to engage in more policing, tighter regulations, some of the things that were discussed in the submissions and some matters that some persons considered to be overkill, would it not reflect in the administrative machine you create in order to implement that type of recommendation and regulation? Is there some relationship there?

Mr. Breithaupt: I think it would, but that will be the policy decision made, I presume, by the minister and his advisers when all the input on the white paper's suggestions is considered. I do not think we will have anything to do with saying what a duty or a responsibility should be. We may observe upon it if there is a failure or comment that it does not seem to be going in the right direction or whatever from a political point of view.

Mr. J. A. Taylor: No, I am thinking of function. According to the function there is to perform, presumably you would engage the appropriate personnel and ensure that it was carried out.

Mr. Breithaupt: Do you think we should observe upon what those functions should be?

Mr. J. A. Taylor: I am wondering whether administration should actually follow the review of the rest of the report; then you can come back to administration because then you would have a better idea of what you were trying to administer. I do not know.

Mr. Mitchell: That suggestion has been made on both sides, and I think it is a good one. I think that is the way it might be best to handle it, Mr. Chairman.

Mr. Breithaupt: You would rather leave this part to the end?

Mr. Mitchell: I think comments have been well made to support that.

Mr. MacQuarrie: Support what?

Mr. Mitchell: Waiting until various other things are available to us, such as the new chart.

Mr. Chairman: We can do that, all right. So we should move on to the section, "Carrying on Business in Ontario," which is section C.

Mr. Renwick: We will come back to section B after lunchtime today then?

Mr. Chairman: Yes, I hope we will be back to that.

Recommendation C-1: "All loan and trust corporations carrying on business in Ontario, wherever incorporated, should be subject to essentially the same rules, standards and criteria." We have a few exhibits listed here and a few of the recommendations by the Canadian Bankers' Association and Morguard Investments Ltd.

Mr. Breithaupt: Perhaps the deputy minister could refer to the CBA presentation. Whereas the suggestion is made in the white paper that all should essentially be playing by the same rules, it would appear that the CBA wants an appropriate exemption. Could the deputy explain why mortgage loan subsidiaries should be treated in any separate way, at least from the banks' point of view, if you are familiar with their argument?

Mr. Crosbie: I gather their argument is that the subsidiary is, in essence, directly controlled by the bank, that the bank is highly regulated by the federal government and that if we impose a level of provincial regulation comparable, say, to the bank regulation, we will have duplicated the total regulation system on the subsidiary, one coming down through the bank side and the other coming through the loan and trust administration.

Mr. Breithaupt: Presumably, they would also raise a constitutional problem with respect to the primacy of the federal authorities in banking legislation.

10:30 a.m.

Mr. Crosbie: Yes. I suppose it is not just the banks. The argument can be raised in respect of any federally incorporated company carrying on business in Ontario. Theoretically--not theoretically, in fact; they are subject to inspection by the federal superintendent of insurance, and, therefore, there should be no inspection of federally incorporated companies by the province. I think that is the logic of that argument.

Mr. Breithaupt: I would not accept as a valid argument in any way that the responsibility of the province under its own constitutional authority would tend, one would think, to allow that overview. On the other hand, the banking argument constitutionally may have a certain principal attraction, but I do not think the simple fact of incorporation, whether it was an occupied field or not, would lead one to necessarily accept the fact of supervision because of federal primacy.

Mr. Mitchell: Mr. Crosbie, perhaps for those of us who are not as well informed about the various operations in the financial community, you might give me an explanation of just what the current situation is. What are the banks doing? Does their control all come under the federal government at the moment or are they covered in some of their new operations by current legislation?

Mr. Crosbie: I would ask Mr. Thompson to outline the answer to that.

Mr. Thompson: Looking at the institution, I think there is not much difference as to where it is incorporated or how it is regulated in the sense it is borrowing money from the public and making primarily mortgage investments in this province.

Mr. Mitchell: May I just interject at this point? They are doing this under separate subsidiaries now?

Mr. Thompson: Yes.

Mr. Mitchell: What sort of names might we recognize?

Mr. Thompson: You are getting the schedule Bs coming in, like Bank of America Canada, but the larger chartered banks have a loan corporation subsidiary. If you want some names: the Bank of

America Canada Mortgage Corp., Continental Bank of Canada Mortgage Corp., Bank of Montreal Mortgage Corp.

Mr. Mitchell: So they are clearly identified as the Bank of Montreal, blah, blah, blah?

Mr. Thompson: Yes. The Nova Scotia Savings and Loan Co., Royal Bank Mortgage Corp.

Mr. Mitchell: Is the Nova Scotia one preceded by "Bank of Nova Scotia"?

Mr. Thompson: No, it is not. I am not clear on that one.

Mr. MacQuarrie: It is the Nova Scotia Savings and Loan Co.

Mr. Thompson: Yes.

Mr. MacQuarrie: That is the company.

Mr. Thompson: Yes. I withdraw that one. Scotia Mortgage Corp. is one of them.

Mr. Mitchell: Do the ones operating in Ontario presently come under your control mechanism?

Mr. Thompson: Yes. They come in and they must be registered. Otherwise, they would be subject to the provisions of the act as operating as an unregistered corporation. There is a further element to the act.

Mr. Mitchell: Are they suggesting they should not have to have anything to do with you at all? As I read it, that is what they are suggesting.

Mr. Thompson: Yes. These are federal companies. They are regulated.

Mr. Mitchell: Yes, I realize that.

Mr. Thompson: To the extent that the mortgage corporation is regulated by the federal department of insurance.

Mr. Mitchell: But it is obviously a feeling that having to be registered with the ministry should continue to be the rule. They are arguing that should not be the rule?

Mr. Thompson: Yes.

Mr. Crosbie: I do not know whether they are going as far as to say they should not be registered. I think they are saying where we had certain rules, for example controlling the upstream holding company, because they are so tightly regulated federally, those same rules should not be imposed provincially. The federal rules should be enough. I do not think they were going as far as to say they should not be registered.

Mr. Chairman: Mr. Crosbie and Mr. Mitchell, before we move on, if we turn to C-18, that is a similar proposal to the one we are discussing. If the committee thought so we possibly could zero in on both of them at the same time; they seem to be very similar in nature. It has to do with carrying on business within Ontario.

This particular item C-1, deputy minister, does it--

Mr. Crosbie: I would make the distinction between these two. Probably, C-18 is more applicable to an interprovincial operation, although strictly speaking you could say the federal incorporation is outside the province. The bankers' submission did relate to federal incorporation, whereas our recommendations on C-1 and C-18 are broad enough to pick up both federal and interprovincial.

Mr. MacQuarrie: Dealing with this question of banks' mortgage loan subsidiaries, I take it that them getting into the mortgage lending field is a fairly recent phenomenon.

Mr. Thompson: I would think that would go back at least 10 years.

Mr. MacQuarrie: It dealt with changes in the National Housing Act and the Bank Act.

Mr. Thompson: Yes, going back to, I believe, 1967, which signalled the direct involvement of banks; the creation of this type of corporation would go back at least 10 years.

Mr. MacQuarrie: Setting aside the constitutional argument for a moment--since this was not traditional in the line of business being carried on by banks; as I said, it is a fairly recent phenomenon--my main concern is I certainly do not see any reason why banks' mortgage subsidiaries should not be subject to a certain amount of provincial governance.

The other thing I want to raise is about all the schedule B banks we hear of now that are coming in almost daily and setting up. What sort of reporting requirements are they subject to, vis-à-vis the schedule A banks, which have to report not only for themselves but also for their subsidiaries on a very regular and very closely watched basis? Are schedule Bs subject to the same sort of controls?

Mr. Crosbie: I am sorry I cannot answer that question.

Mr. MacQuarrie: There is another thing I was wondering about. Mr. Thompson mentioned the matter of the superintendent of insurance supervising the activities of the banks' mortgage lending subsidiaries. Are they not also going in to inspect the banks as well, as part of the overall financial picture of the bank?

Mr. Thompson: I would think, yes, to the extent--

Mr. MacQuarrie: They have two elements of federal control, then, am I correct in that?

Mr. Thompson: That would be so.

Mr. Crosbie: You may recall Mr. MacIntosh made the comment that the government had access to mortgage information from the banks because they were reporting it on a regular basis, whereas it did not have access to provincial mortgage lending because there was no comparable reporting system. One could assume from that comment it would appear to be a regular reporting process.

10:40 a.m.

Mr. MacQuarrie: Yes. From my own point of view I cannot see any trouble with the banks' mortgage lending subsidiaries. Since all this reporting is being done, it should be reasonably simple and easy for them to comply with any reporting requirements we might have.

Mr. Crosbie: I suggest in this area when you move from a general principle you are trying to establish the need to have uniform rules. We refer to this in what is becoming the current jargon as the level playing field concept. Our thought was we should try to put all the loan and trust corporations on essentially the same basis.

In the Loan and Trust Corporations Act there are currently provisions that talk about inspection and which allow the registrar in effect to adopt an inspection carried out by another jurisdiction. I think in the process of looking at the legislative process--and I think we are going to have to look at a number of these issues of the relationships of the holding company to the operating company--there might well be a number of rules that would have to be developed, either in the regulations or possibly the legislation, to allow the registrar to avoid excessive regulation by adopting the reporting information of another jurisdiction.

That might go a long way. When the banks say they should have an exemption, perhaps it is not so much an exemption as a capacity for the registrar to adopt a report submitted to another jurisdiction.

I should also say that, as soon as we have the recommendations of this committee and have been able to digest them and translate them into policy, we would like to have a series of meetings with other provincial governments and the federal government to see to what extent we can reach agreement on some of these processes. I think that is absolutely essential.

Mr. MacQuarrie: A uniform reporting procedure would certainly be desirable if it could ever be accomplished. The main question that came to my mind was how onerous a requirement this would be on the banks since they are reporting in a number of other areas and to a number of other people. It struck me it would not be all that onerous and if, as you suggest, something could be

worked out whereby some of their reports to the other people could be accepted by our registrar, then it is really no trouble for them at all to--

Mr. Crosbie: Yes.

Mr. Mitchell: They say they have it almost readily available and in all the comments they made they said: "It is no problem. We could do it in 11 days." That is what they are talking about. If it is that easy, I think there could be amended forms to accept what they put forward within the ministry.

Mr. Crosbie: Their concern, and I guess it is a legitimate concern at this stage in the process, is we do not create an entirely different reporting system on an entirely different basis so they have to duplicate everything and rework it just to comply with our idiosyncracies.

Mr. MacQuarrie: I can appreciate your point.

Mr. Renwick: We have to be clear conceptually about what we are doing. What the ultimate outflow is in an administrative sense with respect to convenience and responsibility is not the problem to me. Conceptually, the statute has to be very clear from the point of view of the jurisdiction of Ontario, both constitutionally and otherwise. We must assert that jurisdiction with respect to the areas covered by loan and trust corporations including banks, mortgage, loan, subsidiaries and anybody else who wants to come in here.

Having established that, it seems to me to be important we do that for two purposes. One is that while it may be somewhat difficult in practice, the principle has always been basically clear that, regardless of where it comes from, an organization carrying on business in Ontario is subject to laws of general application. That has always been my understanding. It is probably one of the original trite things one learns. I do not think we should be seen to be backing away at all on that question which is the jurisdictional question, the constitutional question.

There is a second aspect of it that is extremely important to me. I do not really care what the officers of the responsible ministry do in deciding about what they will or will not accept, as long as it is understood it is their responsibility. In other words, if Mr. Thompson agrees to accept some statement by someone else with respect to the state of the business, it is Mr. Thompson saying to himself: "I am prepared to accept this and make it my statement. It is my statement."

From our point of view, it is irrelevant what they do for convenience, or because they like the guys up there, or are satisfied the forms are right, or for whatever other reason they do it. However, when he says he accepts someone else's statement he is saying he is making it his statement for the purpose of the law of this province. There cannot be any skating on the question of responsibility.

It is very important that we be clear that this is so in any

of these administrative arrangements. When the statute reaches the final statement about exempting some organizations from something or providing accepting statements, it has to be on the basis that the responsibility is being accepted. If anything goes wrong, the ministry of the government must be responsible with respect to those matters. It cannot say, "It was exempted," or, "We have accepted other rules for that company and we are sorry but they did not seem to quite work out."

Mr. Chairman: Would the deputy say this proposal was consistent with that of the 1975 select committee?

Mr. Crosbie: I believe it is.

Mr. Renwick: It is certainly consistent with that report.

Mr. J. A. Taylor: I think the principle Mr. Renwick has enunciated is perfectly clear and should certainly be acceptable if we are to assume our responsibilities. I would just accept that as a premise from which we operate.

I am not suggesting it is Mr. Thompson's statement, but I am accepting the fundamental principle that the responsibility is a provincial one. There are no back doors from which the province can escape responsibility. I think that is fundamentally what Mr. Renwick is saying.

Mr. Crosbie: I have no problem with Mr. Renwick's statement. The one aspect of the situation which has to be clarified in this process is the limit to which the registrar can apply rules of general application. In other words it must be clarified when rules of general application are deemed to be a type that goes to the heart of the federal incorporation and may be struck down for that reason.

For example, the federal government might be prepared to licence individuals whom we would prefer not to licence. If they have licensed them I do not think we have the authority, just on the basis of disagreeing about their capacity to be licensed, to refuse to register them in Ontario. It is that type of issue.

Suddenly you have people operating in Ontario who would not be here if they were totally under Ontario's rules. That perhaps creates a heavier onus on us. If we have those doubts about them then perhaps we should have to carry out a more rigorous examination of them.

10:50 a.m.

Mr. Renwick: I do not wish to talk in a belligerent sense, but I do not think we should be getting into that kind of a discussion. If a situation like that arose, where someone was going to be licensed to do business in Ontario and that had it been an Ontario organization proposing it you would have said no, then I think what you do is to assert your jurisdiction and if somebody wants to challenge it, let somebody else challenge it.

It is exactly this kind of thing that I refer to as skating,

because if you start to try to make those decisions, then all it does is become unclear. If the federal government, God bless them, decide they want, through their organization, to license somebody to do business here whom you do not want here and whom you would not have here, then you simply say no. If they want to challenge your jurisdictional right to say that, that is their problem; you do not have to conduct a study to decide that. If you lose in the decision, then fine, everybody understands it.

I get a little bit worried when Ontario officials start to make those very fine distinctions on what is a fundamental and basic principle.

Mr. Crosbie: I would just say in elaboration that my understanding, the advice we have received to date, is that we cannot refuse to license a federally licensed corporation. I think what you are advocating is that if we have misgivings, we should perhaps disregard the legal advice we have to date and force it into the courts so the courts tell us to license the company. Putting it another way, we then hide behind the court's decision, or at least we have the additional support from it.

Mr. Renwick: I certainly would be glad to have this clarified. If that principle is going to be put in issue, we had better get it clarified through the courts, because it has been a fundamental operating position of the provincial jurisdiction ever since the days of Mowat, God bless him.

In the case you cited, if there are laws of general application and they are applying to a federal company, and if in the application of those laws of general application in an objective sense you would not license such a company--having nothing to do with whether it is federal or anything else--then I think the responsibility is for you to say so. If somebody wants to challenge the exercise of that jurisdiction, the place to do it is in the courts, because the principle is so fundamental, instead of your going through the business of playing court on that principle. If you need outside legal opinion, I would be glad to give you one.

Mr. Boudria: For a modest fee.

Mr. Chairman: I think you have.

Mr. J. A. Taylor: You have introduced a couple of elements here. One is an assessment or a judgement call that you conclude that maybe this is not the type of company we want operating in Ontario. That might be like trying to define "good character."

The other element is, recognizing that this body does exist and is licensed to operate in Ontario, what rules apply to the actual function of that company? Those, in my view, would be the laws of general application, and there would not be any discretion there that would favour this company any more than an Ontario chartered company, for example.

Mr. Crosbie: I think the position you have just stated

is what I started off saying. Of course, I am not challenging what Mr. Renwick was saying, because I am not an authority on constitutional law, but my understanding was that the rules of general application would apply. When you say you will not license, that goes to the very existence of the corporation in the province and that is taking us a step beyond what we can do.

Mr. J. A. Taylor: It is one thing to acknowledge its being, it is another to permit it to carry on business in Ontario. I would just assume this company, whatever it may be--and I am not sure of the kind of company you are talking about--would be regulated the same as any other company.

It may be we are creating a problem that does not exist.

Mr. Crosbie: There are some very real problems. For instance, if the federal government has a rule on capital requirements that you can incorporate with \$1 million, and we establish a minimum of \$2 million, what does that mean in terms of coming into the province? Can we insist they increase their capital to \$2 million before we will register them?

I put that in a grey area. I have no opinion, no firm conviction one way or the other. I would hope we could insist on the \$2 million in that specific example.

Mr. J. A. Taylor: That may not be as important. We play around with whether it should be \$1 million or \$5 million; that becomes a matter of discretion, I suppose. However, how that company conducts itself is important in my mind.

Mr. Crosbie: Where the federal government's legislation is silent, I think we are in a strong position to apply our laws. But where they have specifically legislated and said a federally incorporated company has certain powers or can act in a certain way, and we are attempting with our legislation to override the federal legislation, then I think we are in a much more difficult position.

Mr. J. A. Taylor: Again, I presume in an area of constitutionality.

Mr. Crosbie: Exactly.

Mr. J. A. Taylor: Because the federal government may have chosen to occupy the field does not mean it has exclusive occupation of that field. It may be included in areas of provincial jurisdiction.

Mr. Crosbie: There is no question we are going to have to work very closely with the Attorney General's ministry as we formulate the actual legislative interpretation of the white paper.

Mr. MacQuarrie: A question that comes to my mind with respect to the loan and trust business generally is the question of primacy of jurisdiction. Who has the ultimate say in some of these things? We see an awful lot of provincially incorporated companies becoming very large and successful and extending their

services across the country on extraprovincial licensing and so on.

I am still left with a question. In a test of primacy of jurisdiction in this particular field, and in view of it being outside banking in a sense, where the feds undoubtedly have the field exclusively to themselves, just how far can we go and how far can they go? As Mr. Renwick said, if it comes to a question, let us test it in the courts.

Mr. J. A. Taylor: When you deal with the subject of banking and then when you see the extension of banking services into areas of loan and trust, with that evolutionary process, one wonders whether it is amending the Constitution, from a practical point of view, to include that as an area of exclusive federal jurisdiction. I question that posture.

If you accept that, then I can see what is happening in the financial community. We will not have any jurisdiction provincially at all, as we evolve in this field.

Mr. Crosbie: Maybe the paper should have been presented because it dealt with this specific area. One of the issues currently before the federal ministry is the federal decision to incorporate or license wholly owned foreign companies.

We have our restriction on shareholding in a company by a nonresident. The federal government has decided that 100 per cent ownership by a nonresident is acceptable. The question is, does that company have the right to carry on business in Ontario when our law says not more than 25 per cent of the shares can be owned by a nonresident?

11 a.m.

Mr. MacQuarrie: That is why I was wondering about the schedule B banks.

Mr. Renwick: As I say, I am not being aggressive or belligerent about it. I do not think it is in our jurisdiction in this committee to alter what the law is on the question. We all know the questions of aliens are knife-edge, for example, in that case, and everybody can posit the kind of problem that creates that problem, but I do not think you should be taking a view of those problems. You should be asserting the Ontario position as against the federal position.

Mr. Crosbie: I think we have done that in the white paper, very strongly. That is what we have done.

Mr. Renwick: Yes. Then I think if the matter has to go to court in order to be clarified, then fine, because everyone knows--look at federal legislation--all you have to say is the Constitution lawyers up there have spent a long time reinforcing their position on each piece of legislation they bring in. You will find they cannot do it under this and they cannot do it under that, and then they always throw in the criminal law as the cure-all for it.

We have to be equally jealous of our position in this matter. The reason I feel strongly about it is simply because we have to be able to control these companies if we are going to pretend that we are controlling them. The difficult problem for the committee trying to deal with the Astra/Re-Mor situation, if I recall correctly, was that the federal people simply refused to come to the committee.

We did not carry it all out, but there was a company carrying on business in Ontario. There were a number of questions which it was not in anybody's interest to leave unclear, from our point of view. Someone may object and say, "Your constitutional lawyers in Ontario are crazy," but all right, then you resolve the questions either head on by a disputed jurisdiction or you can resolve them by reference, if it is necessary to clarify them.

I do not care how it is clarified, as long as you know who is responsible. It is the problem of responsibility. In the Crown Trust-Greymac matter, I think you were fortunate there was a high degree of co-operation between both jurisdictions. That is not always so, and it was not so in the Astra/Re-Mor situation. We cannot rely on co-operation as the basis of Ontario's jurisdiction of it. We can do it administratively, but not from that point of view.

Mr. Chairman: Is there anything further on C-1?

Mr. MacQuarrie: We assert jurisdiction as strongly as possible.

Mr. Renwick: That statute should not give an inch on the jurisdiction question. It may turn out otherwise down the line.

Mr. Chairman: The granting of letters of patent incorporating a loan or trust corporation should remain discretionary, but the criteria to be satisfied by applicants for incorporation should be stricter and more clearly defined.

Mr. Renwick: Mr. Chairman, I do not have any problem with that question, and a number of the criteria set out in the select committee's report should certainly be part of that method of dealing with the incorporation part of it.

I think the distinction which is fundamental in this principle to me is, you can go one of two routes. You can go the discretionary regulatory route, or you can go the mandatory disclosure route. I think where we are deciding we will retain the discretionary regulatory mode of dealing with these companies and the place it starts is at the inception of the companies. We are saying regulation will take the place of the kind of criteria we apply, for example, under the Securities Act.

I think there is a little confusion that somehow or other timely disclosure or the prospectus system would solve a number of these problems. The fact of the matter is that it will not. We have to be very careful about the areas in which we adopt the prospectus disclosure principle and not think this will

necessarily solve problems that can only be solved by the more intrusive operation of a regulatory system.

I do not have any problem with that as long as we pick up everything that is in the select committee report on that same area.

Mr. MacQuarrie: I have some difficulty with the select committee's report, particularly in respect to item (c), as shown under recommendation C-2, that it be no longer necessary to show public necessity in the location of the head office or satisfy a general test of public convenience and advantage.

To my mind those sorts of requirements were really desirable in the public interest. You just did not want to have trust companies sprouting up all over the place in one location and ending up in a dogfight for business, like service stations, one on each corner of an intersection. I thought the standard tests we had discussed during the hearings were certainly desirable as a general rule.

Mr. Hodgson: That speaks only to the head office. It does not speak to the branch offices.

Mr. MacQuarrie: It speaks of the head office, that is right.

Mr. J. A. Taylor: I think that is a fiction to a great degree, establishing public need and convenience, though in other areas you see it. They encourage people to break the law in order to establish that there is public need and convenience, whether it is listing a product with the Liquor Control Board of Ontario or whether it is getting a public commercial vehicle licence.

I question whether it is really all that beneficial when you have a company that is incorporated by letters patent and there is that discretionary element.

Mr. Breithaupt: The fact I wanted to consider was item (d), the matter of no appeal lying from a refusal to grant a petition for letters patent. With the present constitutional framework we have, I wonder if it is still possible to have such a term.

Our colleague Brother Renwick was on the committee. Do you have any view as to this appeal situation which the committee seemed prepared, at least at that point, to deny? Or is there any view in the ministry? It seems to me that to say no appeal can lie from that decision hardly allows entire fair play in the circumstances.

Mr. Crosbie: I will take a crack at it. My view would be that as long as there is an appropriate hearing process leading up to the final decision by cabinet, the refusal to have another level of appeal from cabinet is not unconstitutional.

Mr. Breithaupt: That clearly presumes a framework of certain steps, known to the applicants, which are followed in

accordance with the authority of the persons responsible at each level.

Mr. Crosbie: Yes, that is correct.

11:10 a.m.

Mr. Renwick: I have never given much thought to it but I would assume that if the Lieutenant Governor in Council is the deciding body, that would not be affected by the charter on the exercise of a discretion.

If I can just respond to Mr. MacQuarrie's concerns about it, a careful reading of 3.03 and 3.04 in the select committee's report would indicate, as Mr. Taylor said, that we thought the whole concept of public convenience and necessity was pretty hollow, that there was no real substance to it when you got down to finding out what it meant and that it lent a very real sense of arbitrariness.

The registrar told us at that time that no application had been refused on that ground, either for new incorporation or for a branch network, and so on.

We did not try to do away with that question; we tried to substitute for it what we hoped would come to be considered to be relatively objective criteria against which you decide that very question of public convenience and advantage or necessity.

We were concerned particularly about the quality of the people, first with respect to their capacity to run these companies and, second, with respect to their business character in running the companies.

We were also very much concerned about the protection of the public against some form of laundered money coming in as the basis of the capital for the companies, because it seemed to us that the integrity of the loan and trust companies was pretty high from the point of view of the infiltration of so-called syndicate money of one kind or another. I think that was one of the things we were trying to get clear.

Certainly all the rumours and gossip you read in the newspapers surrounding Crown Trust and others would have led you to believe there were some legitimate grounds for apprehension about the sources of the money that was coming into the trust business.

If we gave some substance to the terms "public necessity and convenience," if you want to keep those words, by saying that in determining that you must take into account these factors, you could reach the same result. I think we just opted to say, "Let us get rid of the rather mythological term and get down to objective criteria."

I do not care whether we keep or discard the terms "public necessity and convenience" as long as the criteria are clear. I

would prefer to abolish them because they tend to become meaningless.

Mr. MacQuarrie: I can certainly see that side of it. I am a bit opposed to discretionary power residing in an individual in situations like that; I also believe competition is one of the keys to a successful operation in any line of business activity. But at the same time I can recognize or see a situation developing, as one did a few years ago, where trust companies became the in thing and you saw a press to incorporate a few of them. Some of them continued to operate successfully; others did not.

I just felt that some test of necessity or desirability should be applied. Whether you approach it indirectly, in the manner Mr. Renwick suggests, or directly, is certainly nothing I am prepared to quarrel too extensively about.

Mr. Hodgson: I remember very well we spent a long time questioning different trust companies. Mr. Renwick and Mr. Breithaupt were both on that committee at the time.

Mr. Renwick: Jim Taylor.

Mr. Hodgson: Were you not on it at that time?

Mr. Breithaupt: I was not on it at that point, but I recall it.

Mr. Hodgson: Anyway, we felt that trust companies--

Mr. J. A. Taylor: You were chairman, as a matter of fact.

Mr. Renwick: You and Mr. Taylor and the chairman were seen walking down counting the cows on a great big estate at six o'clock in the morning.

Mr. J. A. Taylor: We were in the milking parlour; that is true, yes, the biggest shorthorn herd in England.

Mr. MacQuarrie: Milking parlour at the--

Mr. Hodgson: They were the good old days.

However, we felt the trust companies we incorporated here in Ontario after careful scrutiny had personnel at the head of them who felt it was an advantage to locate their head office in, say, London, rather than Toronto. It would be a more viable company.

They had studied where they were going to get their big share of business in their head office. As Mr. MacQuarrie said, they could be starting up on any service station corner. It is their business where they put the branch offices. This is their head office and they felt that, if they could get more customers and do a more thriving business in Niagara Falls than they could in London, they should have the privilege of having their head office at that location.

Mr. Crosbie: I think the recommendation is broad enough to cover the comments that have been made, certainly the clearer definition of what is meant by the criteria. The suggestion of Mr. Renwick of some definition that would pick up the concept in a clearer statement might handle the situation.

Our basic concern with this recommendation is that one of the prime matters you try to observe and control is the financial viability of the company, how good its business is. It seemed to us it is critical when they start up that they satisfy this by producing some sort of management plan that shows they have done market research and they know it is better to set up in London, that there is a reasonable market there.

It is just to have some confidence that, when someone starts a trust company, he has enough market at least to get off the ground and get running.

One issue that has been drawn to our attention since the paper was written is that the white paper does not actually require approval for the opening of a branch office. A large trust company that does not have any capital problems is entitled to open a branch office where it will.

You get the anomaly where you might have said to somebody, "You can open a branch in some small town," the market survey shows it will be a success and, six months after it opens, without coming to us a large company puts a branch there which might put the original company out of business.

Mr. Breithaupt: This becomes the problem.

Do you interfere in or overview the ordinary business operations of a company when you say, to go back to our earlier discussion, "For five years we believe we should watch you grow and have some overview that you do not commit the \$100,000 it takes to open a full service branch in a helter-skelter fashion," and then leave the major companies to go about their business without the overview?

11:20 a.m.

Once any regulator attempts to second-guess every chief executive officer, exactly that result can occur. The small company with a head office in, let us say, Kitchener, since no company has one, wants to expand and decides it wants to have a branch in Elmira, could suddenly be faced with, for example, Canada Trust or whatever, a major organization, including that town of 5,000 people in its next role of expansion, and it could cause some hardship.

However, if we are going to be into second-guessing everybody in that situation, you are certainly going to have a very busy office.

Mr. Crosbie: We realize this conundrum, because it really is a problem for us. When you think of the matters you are going to look at in an effort to be even a proper regulatory

system and you are sitting there with perhaps some insight that there is no proper economic base for that company to survive, then you are going to have to rely on a whole series of other regulatory processes to control it.

It really makes the job more difficult, because you have allowed it to happen. From a business point of view, maybe that is the better way to go.

If you have some general rules here, as Mr. Renwick has suggested, that would allow us to require some minimal demonstration of market. Once that has been satisfied, they are off and running, and we just have to live with the consequences if the market survey is inadequate or competition puts them in a tough spot. I agree, I do not see how we can interfere to that extent.

Mr. Breithaupt: No, it may be their responsibility is to ensure, under the Canada Deposit Insurance Corp. and the application of those rules, that each depositor is protected and the depositor knows the extent of the protection.

Beyond that, so far as the shareholders are concerned, within an institution the responsibility, through their elected directors or the market deciding on the value of shares or the results that a highly paid senior staff achieves, is their business. It may be your business is to make sure, as in that earlier comment, there is a level playing field for all and the citizen-consumer-depositor is protected.

It may be those are the two functions and we should not pretend that we, as a committee, or any administrative staff, can logically or thoroughly second-guess or, at least I would say, overview the business decision of every senior executive in a trust company.

Mr. Hodgson: It may be, if we did something like that, and a second trust company went in there, we shall stymie private enterprise, shall we not?

Mr. Breithaupt: Certainly, that is one of the factors. What you may be doing is saying we are trying to protect--

Mr. Hodgson: You are protecting the company that is in there. You are saying, "You have all this business and, no matter what you do, we are not going to put another one in." If they are not giving service, why should another company not be allowed to go in there?

Mr. Breithaupt: Except the general feeling of--

Mr. Hodgson: You have two banks in there, do you not?

Mr. Breithaupt: --overview and regulation and even the suggestion made as to the review and the approval, or at least a nihil obstat, as far as the appointment of a chief executive officer is concerned, is another one of the themes here.

How far is overregulation going to go? This particularly applies, at least occasionally, in the attitude taken by, if not members of the ministry, certainly members of the government caucus that less regulation is thought to be preferable.

It is hard to set up that kind of framework, without any political rhetoric attached to it. It is hard to have something that will allow responsible persons to get on with what they do best--run a trust company or operate a business--and still include the citizen's supporting role. We all agree the government has a function to perform in this latter aspect.

Mr. Gillies: At the risk of restating the obvious, I believe the average citizen consumer believes somehow his investment or deposit in a trust company is guaranteed by the government.

Mr. Breithaupt: Under Canada Deposit Insurance Corp. we have acknowledged now that it is up to \$60,000. One assumes that covers--let us say 90 per cent for want of another guess--of those who have any money to place into ordinary savings accounts. There is the general understanding that the other 10 per cent, surely, are sufficiently advised and are able to deal with these matters. They know now you do not put more than \$60,000 in one institution.

We have moved to cover that generally. That is perhaps the proper role we have because the institutions are paying for it under the assessments that occur.

Mr. Gillies: I am not sure the average person even thinks about the percentage of coverage. There was a tremendous shock and a disbelieving response to what happened a few years ago. They did not believe it could happen. When they saw their funds could be jeopardized, their reaction was to turn their guns on government: "How did you let this happen?"

While I certainly agree with your sentiments about deregulation and free enterprise, I think the average consumer prefers some regulation. They perceive their funds are secure because the government is in there with various regulations and I suspect the public would opt for this if given a choice.

Mr. Breithaupt: I expect they would too because they have been trained and encouraged and importuned to view things in that light. When there is fault ascribed, protection is sought through some general mechanism which is called in this instance the Ontario government. They believe the Legislature will do something about the problem. The \$20,000 figure clearly was comparatively modest for what we would now call an ordinary citizen, because he could sell his home and put the proceeds into it and that sort of thing. The \$60,000 figure may be sufficient to bridge that problem.

Mr. Hodgson: At the time of the 1975 report on company law it was recommended that it go to \$80,000. There was a sawoff at \$60,000. From 1975 to 1983 is a long time to get a recommendation. A lot of people would have saved a lot of money if they had accepted our recommendation at that time.

Mr. Gillies: I do not know if this information would be available, but I would be most interested to know whether this pattern has established itself in the market. I wonder whether most depositors now do not keep more than the \$60,000 limit in one institution.

Mr. J. A. Taylor: That is why you need lots of trust companies.

Mr. Chairman: We have discussed item C in quite some depth. Possibly we should be moving on to C3.

11:30 a.m.

Mr. Renwick: I have just one comment. I think it is essential we adopt some form of the four criteria we set out in the select committee report as pre-incorporation requirements. They are the same criteria which must, of necessity, carry through to the registration of extraprovincial corporations and federally incorporated companies. They must also carry through to the annual licensing review of each of the companies. So, in a sense, we have come back to where we started. If we have really effective criteria of general application at all stages in these matters, then we are a long way down the road.

The criteria are the fitness, both as to character and competence, of the proposed management to manage a loan or trust company; the assurance the persons who own and are providing and control the funds put forward to finance the proposed company are themselves responsible; assurance that a financially viable operation is proposed, and the readiness of the promoters to offer a broad range of loan or trust services to the public.

We want to express the intent that if those four points are satisfied, incorporation should flow more as a matter of course, recognizing that a company may have to start in a modest way but should have the ultimate plan to provide a well-rounded operation in the field. We came out specifically against limited purpose trust and loan companies that were to be incorporated only to serve very specialized interests. It may well be that someone can improve on either the language or the criteria, but that is not a bad starting place for what we were trying to get at. They have to carry through at all stages.

Mr. Crosbie: The four points Mr. Renwick has paraphrased from the 1975 report are fairly consistent with what we have talked about in the white paper, and even in the current legislation. The amendments in 1982 were more specific in character. I have no problem with this. The language in the fourth point about providing a broad range of loan and trust services "within a reasonable time" is vague. I do not know what the committee had in mind. Is five years a reasonable time? Or 10 years?

Mr. J. A. Taylor: I would say that would be a normal gestation period for government.

The report that some of us on this committee embraced a decade ago is not only relevant but probably timely.

Mr. Breithaupt: As a committee, we may want to observe that in our report.

Mr. Mitchell: Have we now moved on from C2?

Mr. Chairman: We are thinking of moving on, unless there are any more comments from any members.

Mr. Mitchell: We have dealt with the 1975 select committee on company law report. With regard to the recommendation of the Trust Companies Association of Canada about "character and fitness provisions such as those used by New York state," do the principals in companies such as this go through the same clearing process as real estate brokers, for example?

Mr. Crosbie: Yes, they do.

Mr. Mitchell: That proposal is being addressed, is it not?

Mr. Crosbie: I admit I do not know the specifics of the New York tests.

Mr. Mitchell: No, but as far as character is concerned.

Mr. Crosbie: Character, yes, surely.

Mr. Mitchell: That is currently done. The same process is followed, that is, the normal clearing through the police network and so on?

Mr. Crosbie: Yes, that happens.

Mr. Chairman: We should turn to C3:

"Corporations starting a business in Ontario should begin with the minimum powers of a loan corporation and should be entitled to apply for additional powers as they demonstrate their commitment and capacity to fulfil them. The estate, trust and agency powers of a full service trust company should only be granted to those corporations with demonstrated capability in those areas and the necessary financial resources and other qualifications."

Mr. Mitchell: If my reading is correct, it appears that in this case the select committee recommended more leeway than is being proposed in the white paper; i.e., section 4 would appear to me to go beyond what is being stated in recommendation 3 in the extension of full service. Am I correct in my reading of that?

Mr. Crosbie: I am not sure whether the select committee in 1975, when it talked about the competence of management, would make it a condition of the original incorporation that they have the capacity at that time to carry out the broad range of trust services they are required to undertake to provide under section 4, or whether as part of the process their plan for introducing trust services would also be a plan to show how they would train staff and develop them or bring them on board.

If it is the latter interpretation, it is not inconsistent with what we are saying except that we have said we would check that. We would want to be satisfied that in fact the plan had been implemented.

Mr. Mitchell: That is right. Your proposal, as I read it quite straightforwardly, is that as the company shows it is able to do certain things within the criteria established, additional powers or authority will be given.

I just read very simply, unless I was reading it wrong, that section 4 said they will start off with, or will have within a reasonable time, all of those powers.

Mr. Renwick: My problem with this matter is sort of the carrot-and-stick problem. You may very well get people who say, "We do not ever want to get into the estate, trust and agency business." They would rather just be in the financial intermediary business. That is where the money market is and all the rest of it.

Regardless of what some of the well-established trust companies say about their readiness to perform the estate, trust and agency business, everyone knows there are serious financial burdens going on, let alone finding experienced people to do the job.

My problem is that because of the way the government has worded its recommendation C3 in the white paper, there will be very little incentive for people to carry on what I have always thought to be an essential part of the privilege of being a trust company; namely, to have estate, trust and agency business.

Mr. Mitchell: What you are saying basically is that a trust company has certain areas in which it can operate and it had better be prepared to cover the full range rather than just picking off the cream.

Mr. Renwick: They started out with the fiduciary obligations more than the financial intermediary business and now it is the other way round. The way this is worded, a lot of people would say, "That is dandy, because we do not really ever want to get into that game anyway."

Mr. Crosbie: Our perception of it was that the real inducement to provide the trust services is to get the name "trust." To grant it to them up front on what perhaps may turn out to be a vague undertaking to provide the service at some time in the future, they may in fact give you that undertaking with no intention of complying with it and five years later it is still a trust company but it has not done anything.

Ours puts them in as a loan corporation. If they are serious about becoming a trust company, they have to demonstrate it by growth and development of the services. Perhaps we are looking at the same goal from a different perspective or with a different approach.

Mr. Renwick: In very specific terms, are you saying that

when they move from a loan corporation to a trust company it would also mean moving to provide them with section 115 and section 116 powers as well? In other words, they would be loan corporations--

Mr. Crosbie: Right up until that point.

Mr. Renwick: --and they could not have the use of the term "trust" in their name.

Mr. Crosbie: That is right.

11:40 a.m.

Mr. Renwick: And people who deposited their money would derive only the protections of the nature of their deposits apply to loan corporations. Am I correct?

Mr. Crosbie: That is correct.

Mr. Renwick: I cannot find the loan company one. Sections 115 and 116 are peculiar to the trust companies in the fiduciary business. The equivalent loan one is--

Mr. Crosbie: Trust companies' powers, section 111?

Mr. Renwick: Is it section 111?

Mr. Crosbie: It starts at section 111, I believe. Section 110?

Mr. Renwick: No. Sections 115 and 116 clearly set out the trust nature of a deposit and a guaranteed investment certificate.

Mr. Mitchell: Mr. Renwick, are you reflecting back on those comments that were made, I believe, by C. Wallis King? Mr. Breithaupt also mentioned Municipal, where they had said ETA was not a good part of their business, but they were in fact moving to expand it. Is that the sort of connotation this select committee paragraph referred to?

Mr. MacQuarrie: I was wondering, as a supplementary, whether Mr. Crosbie or Mr. Thompson could outline the type of services that are peculiar to a trust company--in other words, services a savings and loan company cannot provide--in addition to the ETA business. What about corporate transfer agents? What about company pension plan administrators, this sort of thing? Can you give us a broad-brush run over what a trust company can do that a savings and loan company cannot?

Mr. Thompson: Mr. Chairman, the proposal we were advancing for a new company was that the savings and loan would basically be a deposit-taking and debenture-issuing institution. As it demonstrated its competence it could add what is called agency powers, which are already contemplated under the act; they could be as simple as providing for a safety deposit box or the holding of some forms of securities in an agency account. But they would gather experience in this type of responsibility to members of the public, and the trust company per se would act.

That would not include at the present time the ability to act as a trustee under a registered retirement savings plan or a registered home ownership plan; that is still a trust function by means of the Income Tax Act of Canada.

Mr. MacQuarrie: Just run that past me again. A trust company can now be the trustee of an RRSP or an RHOSP?

Mr. Thompson: Right.

Mr. MacQuarrie: Savings and loan companies cannot?

Mr. Thompson: Not unless there is a trustee that is a registered trust company. The way it exists now is that life insurance companies can provide registered retirement savings plans directly, as banks can; and trust companies can, provided it is a trust type of arrangement, that there is actually a trustee.

Now, if banks can do that function--and really what we are talking about is a savings and loan corporation rather than the old concept of a mortgage company--I think it would be worth discussing with the federal authorities whether they would extend that to it, because we were really trying to say from the public point of view that if you go into a trust company in the future, heaven knows how many years down the line, there should be a broad range of trust services as estates, inter vivos trusts, etc., available to you and being offered generally to the public.

Mr. Breithaupt: Yet at this point surely a number of the companies that have been incorporated so far have no likely intention of ever offering a full range of services that result perhaps from family investment opportunities or the use as a vehicle for that kind of personal business operation.

I will not name names because I do not know the particulars of any of them, but it seems to me a number of them were incorporated more for personal or family opportunities, and were all quite appropriate to do so, and that side of the business was likely not expected or planned for by the majority shareholders or, indeed, the sole owner as I suppose could often be the case.

Mr. MacQuarrie: Some of them were really incorporated for a single purpose, i.e., administering company pension plans or registered retirement savings plans and that type of operation.

I was just trying to get a distinction between what you propose be the functions and powers of a savings and loan corporation as opposed to a trust company, and how we then encourage savings and loan corporations to get into the trust business on a broad sort of base.

We talked about the minimum powers of a loan corporation. Frankly, I am not as familiar with the sections of the present act as perhaps I should be, so I do not really know what the minimum powers of a loan corporation are or what you propose them to be. As I gather from what you have said, the savings and loan corporations are mainly to accept deposits, issue guaranteed

investment certificates or some sort of similar paper, and that is about it. What about the lending aspect of it?

Mr. Thompson: Some of them are what is termed wholesale in that they do not have the deposit-taking as a demand money operation. They may not even have that, but they are allowed to issue a form of debenture. They can do it on a term basis. Within that concept I think you want it to act sort of as a mortgage corporation, lending residential mortgages out and taking money in by debenture. A number of these operations are.

We were coming around from the point there are probably six trust companies that really do not offer any form of trust services.

Mr. Breithaupt: They may never have intended to in their development.

Mr. Thompson: Yes.

Mr. Breithaupt: I suppose they are quite content.

Mr. Thompson: I think there is clearly more value to the term "trust" in the corporate name.

Mr. J. A. Taylor: As I see the white paper proposal, you would have your deposit and loan corporations created by letters patent and then at some point, on application, there would be supplementary letters patent that would extend the trust powers of corporations and with that a change to include the name "trust," is that it?

Mr. Thompson: Yes. We have an intermediate step there.

11:50 a.m.

Mr. J. A. Taylor: The powers are limited initially and the name is also limited.

Mr. Thompson: Yes.

Mr. J. A. Taylor: How do you handle existing loan and trust companies that do not really function as trust companies? Do you grandfather them some way or what is the proposal there?

Mr. Thompson: I think we would initially. Obviously they were incorporated under different legislation and you would have to grandfather them, but I think we could use moral suasion to encourage or direct them into one path or the other.

Mr. Renwick: How many would there be?

Mr. Thompson: Six, I think. Six are really providing no trust services whatsoever.

Mr. Renwick: But they are using the name "trust."

Mr. Thompson: Yes.

Mr. Crosbie: There are many others that just have nominal trust services.

Mr. Breithaupt: Would you foresee any new company applying for the trust designation immediately, with a commitment to provide a full variety of services within a certain period of time, or would you expect all future startups in this business to be as a loan operation?

Mr. Crosbie: We have taken the position, having been asked that question before outside this committee, that if somebody is prepared to come forward and demonstrate they have the capital and they are buying the expertise and are able to open the door with a trust service, we would recognize that.

Mr. Chairman: Mr. Boudria has been very patient, and he may forget the question if we do not give him the opportunity.

Mr. Boudria: I have already done that, but I have thought of three or four new ones.

Mr. Chairman: In the fullness of time.

Mr. Boudria: I am trying to clarify the role of this loan corporation. In one aspect, you say the trust company, for instance, will be the type of institution that could handle registered retirement savings plans. On the other hand, we know such people as mortgage brokers have been delegated RRSPs by trust companies. What stops somebody's trust company from handing that power back to a loan corporation to which you will not give it in the first place? They end up having it anyway, the same as they do now.

There are mortgage brokers in Ottawa selling RRSPs. I had cut out an ad in the paper to show to you, but I left it in my office. It says "Trust company RRSPs" and "So-and-so's mortgage company" and it sells them.

What stops them from doing that now? You can have a loan corporation essentially doing the same thing as a trust company, so why not call it what it is? On the other hand, this estates, trusts and agencies business they do not want anyway, they may never want.

Mr. Crosbie: I think that is another question, whether or not trust companies or loan corporations should be allowed to take deposits through agents. It is quite common for the trust companies and the loan corporations to have agents in effect soliciting the money and forwarding it to the corporation, and I suspect that is what you are talking about in the RRSPs. They are just acting as agents to sell the RRSP. What you actually get is a document administered by the trust company.

Mr. Boudria: But you still have all the transactions and everything being done by--

Mr. Crosbie: By an agent who happens to be a mortgage broker.

Mr. Boudria: Yes, in this particular case, but what I am getting at is here we are looking into all these ways to ensure shifty people are not party in any way to trust companies and so forth. Yet trust companies delegate this authority back to people who may have fewer qualifications, no qualifications, or unearned qualifications in the case of loan corporations, because those will be sort of probationary outfits so we can evaluate just how competent those people are.

Mr. Breithaupt: But we cannot run every aspect of their business.

Mr. Chairman: That is right. I think they assumed the responsibility when they had these people. They appointed the agent, and they assumed the responsibility.

Mr. Boudria: Following on from all of this, one feature of this two-step affair would be that the ultimate goal would be the "trust" name. There is a prestige attached to this which is important in the eyes of the consumer and all of this type of thing, and it has a lot of inherent value attached to it in the fact that it is called a trust company. Is that not just a temporary phenomenon?

For instance, if all of a sudden we had a whole bunch of new loan corporations, would the name "trust" not gradually decrease in importance? The adoration would be directed to the new animal called the loan corporation. After all, they issue guaranteed investment certificates and do all those other nice things that consumers generally want on a day-to-day basis.

Mr. Crosbie: All I can say in reply is that they already have been around for approximately the same length of time and that adoration of the trust companies does not seem to have diminished. The loan corporations are still seen as the less desirable corporate form. There does seem to be some magic in the word "trust" in the eyes of the public.

Mr. Boudria: But you would be increasing the numbers of loan corporations and making new corporations go that route pretty well automatically, not counting the exceptions you referred to just now. Generally speaking, they would all start off as loan corporations, or most of them would. You would therefore have more of those as opposed to the full trust companies.

Would you not be getting back to what occurred a few years ago when trust companies started? People all of a sudden began to say, "It is almost the same as the bank and this is okay." Will you not have a situation now where people will be saying, "Loan corporations are almost the same as trust companies and this is okay." That other step becomes of no value.

Mr. Crosbie: It could happen. Of course one direction in which the federal government was heading was to discontinue

registering trust companies and just have savings and loan corporations.

Mr. Breithaupt: That incorporation as a right?

Mr. Crosbie: I am not sure what they were doing there, but they saw the problem we are facing of having trust companies incorporated which in fact were not trusts. If they just went to savings and loan at the federal level that might tend to create a more acceptable image for loan corporations at the provincial level.

Mr. Renwick: There is a very real difference though. If you deposited your money in a loan corporation before there was any CDIC, you were simply an ordinary creditor. If you put your money into a trust company you had money in trust and there were assets set aside to meet that responsibility. Now you have raised the limit, I do not see a hell of a big problem with us giving serious consideration to forgetting the loan incorporation part of it entirely. We could let it go by ordinary, everyday incorporation and organization.

Mr. Breithaupt: For a loan corporation.

Mr. Renwick: You could make a case for letting that go--protecting the special and particular nature of the trust corporation.

Mr. Boudria: You were talking about the history of the trust name and the fact the loan corporation also had a long history, although it is not one that stands as well in the eyes of the public. The CDIC is a rather recent innovation. Would it not again act as a factor to change that perception?

Mr. Crosbie: I think so. I have to agree. To what extent is another question.

Mr. Boudria: The two-step affair still makes me wonder.

Mr. Chairman: Have you concluded? Mr. Renwick.

Mr. Renwick: I have nothing further.

Mr. Chairman: With that, being no further questions on C-3, we should move to number 4, on page C-5. The minimum capital for the incorporation of a loan corporation should be increased to \$2 million and the minimum capital for a full-service trust company should be \$10 million. Existing corporations that do not meet the financial criteria would be given time to do so.

Mr. Breithaupt: Are there any corporations at the moment that have simply the minimum capitalization? Or have many of them moved up, so you would have very few caught by this new provision?

12 noon

Mr. Crosbie: As to use of the word "trust," there are quite a number of trust companies that do not have the \$10 million.

With respect to the movement to \$2 million, Mr. Thompson, are some still below \$2 million?

Mr. Thompson: Yes, there are.

Mr. Breithaupt: Are the ones that are below the \$2 million in that group of six that are not planning to go into the full trust operation anyway?

Mr. Thompson: I would think there is one.

Mr. Breithaupt: Or at least several of them might be.

Mr. Thompson: On the Ontario scene there are two trust companies and one loan corporation below that minimum.

Mr. Breithaupt: Are they in that group of six?

Mr. Thompson: Yes, none of which are--

Mr. Breithaupt: Anyway.

Mr. MacQuarrie: In this, when you speak of minimum capital, I take it you are speaking of subscribed share capital, either common or preferred, are you?

Mr. Thompson: We are allowing them to include retained earnings in there if they have a plan to bring it in permanently as capital and if it is not subject to being taken out.

Mr. MacQuarrie: This is what I was thinking about. You can see a company ending up with fairly substantial capital holdings in retained earnings and the rest without increasing its original capitalization, and you propose, then, to allow retained earnings to constitute part of the capital.

Mr. Breithaupt: At least as they would get to the next stage.

Mr. MacQuarrie: Are you differentiating between common shares and preferred shares in the capital setup and the terms attached to the preferred shares, whether they are callable and the rest? A company could come in with a fairly heavy subscription in the first instance with shares that are possibly callable in the preferred sense, and their initial capital subscription could go down over the period although their capital structure might be entirely satisfactory.

I do not know how you envisage the situation of a company starting off with this capital base and how that capital base is likely to be affected by corporate manoeuvres.

Mr. Thompson: We were proposing here probably not to adopt the term, but the term used in the act is "permanent capital."

Mr. MacQuarrie: Permanent capital.

Mr. Thompson: That would be, to my way of thinking, by common share only, so it was permanently locked into the company.

The question of preferred shares and all the features that have been appearing recently, such as retractable preferreds and so on, I think is a matter that would have to be addressed in the determination of the borrowing base to determine the multiple that would come in and (inaudible) working on it in that base.

Obviously, even with shares that are subject to redemption at a fixed time, to some degree you are relying on management's ability to replace that capital. If you have a borrowing multiple based on that capital, certainly I would think within three years of that redemption period coming up you should have a plan either to replace it with permanent capital, if we can use that term, or to have another issue there; otherwise you have to start reducing the borrowing.

Mr. MacQuarrie: I just foresee a few complications that could arise in this relationship to capital.

Mr. Chairman: Mr. Thompson, may I ask a question? Are you going to be able to recommend approval of a lesser minimum capital in specific circumstances?

Mr. Thompson: Yes, I think we could. What we are concerned about particularly--and I do not think we have emphasized this--is the regional type of operation, which may be very valid within its own area. Once you say "region," you ask, "What area is that?"

Mr. Chairman: A remote area.

Mr. Thompson: Yes. But we have given a lot of thought to the concept that if someone in a smaller city in Ontario than Toronto wanted to operate within those bounds and offer a full range of services and if he had the competence, the expertise of his people, etc., the criteria for this are something that I think can be explored and recommended.

Mr. Breithaupt: So at this point if you are going to keep \$1 million, you are going to impose certain conditions, along with \$2 million for some responsibilities, and you expect a third step of \$10 million for a full-service operation.

Mr. Thompson: Yes.

Mr. Breithaupt: As I read the recommendation, and following those comments, really the minimum capital for incorporation would be \$2 million; but you just talked about the regional situation, which would perhaps bring some exemption. If you say something is a minimum, would it not be fair to say that in the first place?

Mr. Thompson: No, I am sorry.

Mr. Breithaupt: Did I not quite get the thrust of your remarks?

Mr. Thompson: No. I was addressing the \$10 million. I am sorry. We would say that \$2 million is the base.

Mr. Breithaupt: In any event.

Mr. Thompson: Yes.

Mr. Chairman: My concern about this particular problem would be that if you had, as you say, a regional company, and it had to go from, say, \$2 million to \$10 million, we would be encouraging some people to go in there and actually take over the trust company and switch all around, and that is really not the intent of it.

Mr. Thompson: No. That is a very difficult situation to deal with, because the company with, say, a \$2-million capital base may be operating within its own community very effectively and very well and it may have no plans, except maybe to move out into another township or something. I say the option is still open to offer a full range of services within that region.

That brings us to our other recommendation, though, that we do not want to force sales of good operations, because it will bring other people in; but it comes to another operation that we are concerned about, which is branching. We would like to have some say in the financial cost of a smaller company opening branches, not necessarily to the degree of saying we want to second-guess management as to whether they should open a branch or not but to see the financial impact on the paid-in capital, because we know it is at least three years before it becomes profitable.

You sort of juggle all these things, and we are hoping we have set out here some of the considerations we would like to take into account.

Mr. Breithaupt: For example, is not one of the trust companies--a smaller one, but which offers a full range of services--in the Ukrainian community? I do not know the name of it.

Mr. Thompson: Yes. I do not recall the name.

Mr. Chairman: We have it. That is our problem.

Mr. Breithaupt: Which name was that?

Mr. Chairman: Community Trust.

12:10 p.m.

Mr. Breithaupt: Community Trust. Let us say, for example, there was an interest in the Kitchener area shown by people of Ukrainian background and that the services of this company would be appreciated and convenient and useful. Therefore, a plain office, not necessarily a full-service operation, might well be available to service that group within my own community.

This is the kind of step forward that you would think would be encouraged by everyone involved. At fairly little expense a

population would be serviced to their liking, even though within our community full-range services may be offered by half a dozen of the major trust companies and lesser services may be offered by five or six others. So you are going to get into guessing, I suppose, as to whether that particular market could be served or whether there would be an interest on both sides--the population and the trust company--in that kind of example.

Mr. Renwick: I certainly think it is somewhat illusory. The question of the initial capital on incorporation does not carry much advantage at all, to my mind. I think there are more disadvantages to it, from what both the chairman and Mr. Breithaupt have said.

Outside the metropolitan area I would rather see a trust company start up on the basis that it intends to be a regional company with a full range of services, rather than to be hit with an arbitrary requirement of moving from loan corporation status to trust status at \$10 million or to be faced with something called special circumstances from the bureaucracy.

I would be inclined to think we should be more interested in stimulating this kind of development, regardless of the difficulty we perhaps run into with--

Mr. MacQuarrie: It really boils down to the question of whether the capital requirements advocated here are reasonable.

Mr. Renwick: The \$10 million may make sense on some inflationary values. Even less than 10 years ago we recommended that they go to only \$1.5 million.

I do not see it as a protection for the public in the long run. I think if all the other criteria are there, there is something very arbitrary about going to that high a figure.

Mr. Chairman: But is minimum capital not helpful in the borrowing leverage you have?

Mr. Renwick: Yes, but the jokers who want to incorporate the company are going to know that if they want to get that leverage they have to have the dollars to do it. In other words, they have to have X number of dollars in there before they can get X number of dollars on deposit; and to get X number of dollars on deposit means what is the use they are going to be able to make of the funds in order that they can take the spread?

I think it works itself, rather than by our imposing an arbitrary figure on it.

Mr. Crosbie: I know. We have had discussions with a regional trust company and that is their very position. They are serving a certain market and if they had to have \$10 million capital they would not have enough market to service it. Their borrowing ratio, the amount of deposits they would have to take in, just is not there. They are not planning to do much in the trust area.

I think the \$10 million for full-service regional trust companies could very well be too high and I am concerned about that. We would be quite happy not to specify the \$10-million limit. If there were a \$2-million bottom with this connotation that you have to have some sort of plan or commitment to becoming a trust company, I think that in itself would carry an obligation to capitalize to provide the service, because you have to have--

Mr. Renwick: I do not think regional is a proper distinction, if by "regional" we mean a place outside the metropolitan area or something like that. It seems to me I should be able to start up a trust company in Toronto if I feel I can meet all the other requirements except the \$10 million one if I want to start it up.

Mr. Crosbie: I think Mr. Thompson used the example of a regional company within Toronto, so I would not rule that out. Just the example I was talking about was outside Toronto.

Mr. Renwick: I am sorry. I missed that.

Mr. Crosbie: The same problem arises that if you are operating very successfully, maybe with a \$5-million capitalization, it is unreasonable to require you to expand beyond your capacity just to meet some arbitrary definition of success.

Mr. Breithaupt: This is the problem, I think, that troubles me as well: the idea that there is something magical about the figure of \$10 million.

To look, for example, at Mr. Boudria's reminder that there is no trust company in his constituency, if a number of locals wished to form the Hawkesbury Trust and get on with doing whatever they would like to do, or if the Ukrainian population in Kitchener could be well served by a branch of Community Trust and if they would like to make those arrangements, surely this is something we should stimulate, instead of setting the capital requirements so high that both of those opportunities are met simply with a branch office of a major trust company.

It is not that this is a bad thing, because if that area was not being served by any trust company, it would be fine for a major one to open an office, shall we say, in Hawkesbury. But to set the capital requirement so high that it is impractical for local people in the area to get this opportunity and that the growth really will be met only by the larger companies because of what we have done seems to me to be unfortunate.

Mr. Renwick: There are real dangers for the bureaucracy of charges of favouritism, that people will say, "Well, those who have met the special circumstances and got in under the \$10 million obviously had to be Tories to get there." You would not want to be charged with that kind of favouritism.

Mr. Chairman: But the fact of the matter is that we are giving the registrar some discretionary powers.

Mr. Renwick: But every time you allow a very special

circumstance you are going to be subject to the allegation that there is some kind of favouritism in that operation, and I consider that the clinching argument.

Mr. Crosbie: A position I could recommend to the committee is that at this point we remove the \$10-million figure as a requirement and suggest some concept that the capital requirements for moving into a trust company would have to be consistent with the needs--

Mr. Renwick: Consistent with and appropriate to the--

Mr. Crosbie: Yes, and that we carry out studies to determine what they are, because I think a little more research in this area might determine that certain facilities require certain capitalization. We have not done this with the \$10 million, but we may find that a regional trust company, whatever we mean by that, could provide full services on a regional basis for \$3 million or \$5 million. If that is the case, obviously we would not want to force them to the \$10-million limit.

Mr. Boudria: So it would be somewhere above \$2 million.

Mr. Crosbie: Yes, \$2 million would be the minimum, and we would do some more work and maybe be able to establish guidelines or regulations at a later date once the--

Mr. Renwick: There would be nothing wrong in saying that the capital should be appropriate to the plans of the organization and in any event should not be less than \$2 million.

Mr. Crosbie: Yes.

Mr. Renwick: So you can provide that kind of support.

Interjection: Flexibility.

Mr. Boudria: How are you going to make this apply to the extraprovincial corporation? Suppose you have one that is licensed now in Ontario and is incorporated in Quebec?

Mr. Crosbie: I think we are in total control with the extraprovincial ones because they cannot come in unless they meet our requirements.

Mr. Boudria: What if they are already here?

Mr. Crosbie: It is the same as the grandfathering clause; we have the same problem whether they are extraprovincial or not. If the law comes in and says that to continue carrying on business in Ontario you must have \$2 million, we may give them a grace period, a number of years to get up to \$2 million. I do not think many of them would be that much below it.

Mr. Renwick: If you take a different approach to it you minimize the clash with the federally incorporated capital requirement.

Mr. Crosbie: Yes.

Mr. Boudria: Let us look at that one, then, the federally incorporated one. Suppose there is a small one providing an excellent service in Ontario and it just does not intend to get any bigger than it is now.

12:20 p.m.

Mr. Crosbie: Part of our discussions with the federal government will perhaps be an effort to convince them they should establish the same criteria.

We did this, for example, on the insurance companies. It has not been formalized but we have reached general agreement. Any province being asked to grant a licence to an extraprovincial corporation can require \$3 million capitalization.

If a province thinks it can get along with smaller capitalization for its own companies within that province, then it is free to do so. However if it an outside company comes in, everybody is agreed we can ask for \$3 million capitalization.

Mr. Boudria: Are you confident you will get that kind of co-operation too?

Mr. Crosbie: Yes.

Mr. Chairman: There being no further questions on number 4, if we could move--

Mr. Renwick: I would be concerned about it being anywhere nearer \$5 million; I think a couple of million is not a bad place.

Mr. Chairman: We are on page C-7, dealing with number 5: "The powers and functions of every loan and trust corporation carrying on a business in Ontario should be reviewed annually." Any comments on that by any members of the committee?

Mr. Breithaupt: If I could go back for a moment: with respect to recommendation 4, do I understand now that the kind of thing our research people will be doing is writing up the observations we have made, with the response of the ministry that this \$10 million is going to be no longer their goal but they are simply going to reconsider?

Mr. Chairman: That is right, that is what I understood.

Mr. Breithaupt: This is the kind of thing we will then see as their summary of what we have exchanged.

Mr. Chairman: Yes, I believe so.

Mr. Van Horne: With no further discussion at that point; is that what we are sticking to, or----

Mr. Chairman: We can refer back to it if we want to. There is nothing that--

Mr. Van Horne: It is still not cut in stone.

Mr. Chairman: No, not yet.

Mr. Renwick: On this annual question, perhaps I should ask what is meant by annually. That sounds like a silly statement, but--

Mr. Chairman: Once a year?

Mr. Renwick: Is it staggered?

Mr. Thompson: No, it is not, it is June.

Mr. Renwick: That is what I was going to come to. For the administration of the act, would it not be much better to stagger the renewals from the point of view of the work load over the time? In other words, you make it the anniversary date or the end of the nearest month in which they originally got their certificate or whenever it was, so you would not have them all bunched. It bears no reference to their fiscal year.

Mr. Crosbie: I think you are right. We are doing that in other areas and I think it would be appropriate here.

Mr. Breithaupt: Is their fiscal year always the calendar year?

Mr. Thompson: No, it is not; but their reporting year is on the calendar year, that is for their annual return.

Mr. Crosbie: We need that one single date for preparing a report as of a given date, but in terms of carrying out this sort of review you can do it any time as long as you do it on a regular basis.

Mr. Thompson: Staggering would be much better for us because our examination program is geared on the whole year. We are really put in the position, frankly, of renewing a licence in June for a company we have not really examined based on their December 31 report.

Mr. Breithaupt: Is there a common renewal date that you use?

Mr. Thompson: Yes, the end of June. I think that is part of the whole process that we had to look at.

Mr. Breithaupt: Yes, I think you will get to the stage of at least dividing your total number of companies into blocks of 12 that are manageable, depending on the resources available to you, and perhaps informing them that as of this year you are going to provide 13- or 14-month renewals to get into a pattern of an annual renewal at some point within any given year.

Mr. Thompson: Yes.

Mr. Renwick: If it is administratively sensible it seems to me to make sense to do it that way.

Mr. Chairman: I think this could be a good point at which to stop.

Mr. Renwick: The only other point I wanted to make on this is that when you say "reviewed annually" I think it would be important that we understand what that review is to comprise, particularly in relation to criteria with respect to the original incorporation.

There are other things, obviously, that your review will comprise, but I think it should be clearly seen that the question of the competence and character of the management and whatever plan they have for moving on and expanding their business, should all be seen to be parts of the criteria for the renewal of the licence.

Do you renew it or do you issue a new certificate?

Mr. Thompson: We just renew it. We do not actually issue a new certificate, it is just noted as renewed.

Mr. Renwick: It is noted as renewed. Is that on their certificate or on your books?

Mr. Thompson: On our books; we actually send out a certificate with "renewed" on it.

Mr. Renwick: It says "renewed," which I assume they would file with their original certificate and any previous ones.

Mr. Thompson: Yes.

Mr. Chairman: Just before everyone leaves: we were asking about the amendments to Bills 122 and 123. They will be delivered to the committee members' offices this afternoon. The reprint will be ready on Friday, and we hope to have those delivered this coming Friday.

With that I think we should adjourn for lunch and we will reconvene at two o'clock. The meeting is adjourned.

The committee recessed at 12:26 p.m.

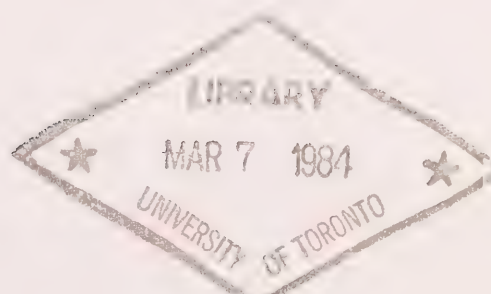
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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO

TUESDAY, FEBRUARY 28, 1984

Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Boudria, D. (Prescott-Russell L)
Breithaupt, J. R. (Kitchener L)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Grande, T. (Oakwood NDP)
Kerrio, V. G. (Niagara Falls L)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitutions:

Hodgson, W. (York North PC) for Mr. Eves
Van Horne, R. G. (London North L) for Mr. Kerrio

Clerk: Arnott, D.

Staff: Mooney, P., Researcher, Legislative Library
Nigro, A., Researcher, Legislative Library

From the Ministry of Consumer and Commercial Relations:

Crosbie, D. A., Deputy Minister
Thompson, M. A., Superintendent of Insurance and Registrar of
Loan and Trust Corporations, Financial Institutions Division

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, February 28, 1984

The committee resumed at 2:06 p.m. in committee room 1.

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO
(continued)

Mr. Chairman: I see a quorum. We will deal with section B, on administration. The clerk is now giving us the chain of command and once we get that we probably can proceed with administration.

I believe we were discussing B-1: "1. In the future, there should be a more active approach to regulating loan and trust corporations in Ontario in order to anticipate problems." Then we were discussing the new assistant deputy minister's administration.

Deputy minister, I wonder whether you could take us through the organization chart you have prepared for us.

Mr. Crosbie: Yes, Mr. Chairman. As you can see, the reporting relationship--I have shown the minister and the deputy minister together as a combination we refer to as the ministry office. The commissioner and the advisory committee would report to the ministry office, rather than through the assistant deputy minister.

The assistant deputy minister of course reports directly to the deputy and the legal services are shown as a broken line because those services are actually provided by the Attorney General, although the staff is assigned to our ministry. From a work assignment standpoint they would be reporting to the assistant deputy minister.

Mr. Van Horne: Just out of curiosity, which ministry pays?

Mr. Crosbie: We do. It is in our budget. We transfer funds out each year for them.

The five boxes in the next row are the functions: credit unions and co-ops; superintendent of insurance, and under the superintendent of insurance there are two areas, motor vehicle accident claims and insurance generally. Administration support is just generally the financial processing or the personnel and all that sort of administrative data in the division.

As you can see, the registrar loan and trust has two functions, the main one of course being the loan and trust corporations, but the registrar is also responsible for the

Cemeteries Act and the functions there. Then we have the investigations, as proposed by the white paper.

Mr. Mitchell: That business is dying, is it not?

Mr. Crosbie: The cemeteries?

Mr. Van Horne: I am afraid your jokes--

Mr. Crosbie: That is why we order fences around the cemeteries, because people are just dying to get in.

Mr. Mitchell: They are also among the coldest places around; in many cases, 200 and 300 below.

Mr. Van Horne: Move on, Mr. Chairman, quickly.

Mr. Mitchell: If I may: you know you have made a few comments, Mr. Crosbie. Just to do the comparison, however, with this organization as suggested by the white paper versus the organizational chart that is in the report, in the brown document, am I correct in that that arrow where it is shown, "executive director, financial institutions"--well, first of all, who fills or filled that role?

Mr. Crosbie: That is Mr. Thompson's position.

Mr. Mitchell: I gather, then, that you are effectively raising the level of all of the other people. Mr. Thompson will be responsible for less of an area, but one that is more prominent, and the others will effectively be sawn off from him.

Mr. Crosbie: The fact that they are all in the same row does not mean they are all the same classification; it is just a reporting relationship.

Mr. Mitchell: I guess the point I am getting at is the area of responsibility. Mr. Thompson will now have his responsibilities more directed instead of the absolute, totally broad--

Mr. Crosbie: Yes, that is right.

Mr. Mitchell: It was horrendous. As they say, the ministry covers from womb to tomb and all stops in between.

Mr. Crosbie: Yes.

Mr. Chairman: So the only new box we have added is the investigations, is that right, Mr. Crosbie?

Mr. Renwick: And the commissioner advisory--

Mr. Crosbie: The commissioner advisory committee, although the functions in some of the other boxes will change significantly. The organization before resulted in the deputy director of financial examination services providing examination services both for insurance and for loan and trust. What is

proposed now, and we have not broken it out, is that the superintendent of insurance under the insurance box will have his own examination services and the registrar of loan and trusts under the loan and trust box will have his own examination services.

Mr. Chairman: We are talking about the people who just check the books.

Mr. Crosbie: Regularly, yes. They are just going to do routine examinations.

Mr. Chairman: The routine examinations. Okay.

Mr. Crosbie: Yes. So there is quite a difference in the content of the boxes from the chart in the internal report.

Mr. Chairman: Are there any further questions on the organization chart?

Mr. Renwick: Perhaps we could start with the assistance of the chart and start to go through the--

Mr. Chairman: Fine. I believe we have pretty well dealt with the first item. Maybe we should move--

Mr. Renwick: I do not think that is necessarily a consensus in the committee, but it is basically a matter for the ministry, it would seem to me. The ministry believes there is and, unless the committee or a member of the committee wants to endorse that wholeheartedly, I do not think it necessarily flows from the work we are doing or have done.

Mr. Mitchell: I am sorry. I missed that.

Mr. Renwick: I do not think the case has been made for recommendation 1. I am not saying we should oppose the restructuring and reorganization of the ministry; it is interesting to know and we have asked some questions, (inaudible) questions about it, but I do not think the committee should be called upon to endorse that recommendation.

Mr. Chairman: Are there any other views on recommendation 1? We will give the committee a minute or two to have a look at it.

With respect to the first recommendation, Mr. Renwick, the assistant deputy minister's position and the investigation, does that not stem from their saying they should have more control over it?

Mr. Renwick: I do not think we need to endorse at all; we can note what the ministry is proposing with respect to its reorganization and that we have asked various questions in connection with it and we have these comments, but I do not really believe the committee is in any position to come down in support of the implication of these recommendations in their full force, either in item 1, for example, or the obvious increase in activity

promoted by the reorganization and restructuring, or recommendation 5 on page B-6, which is that the registrar should be given broader and more far-reaching regulatory powers. I do not think that is my sense of where we as a committee have been.

I think those are purely matters for the ministry to deal with. If they have had problems and this is the way they think they should solve them, that is their problem. I do not think they should call us to support them on that area, nor should we be critical about it. I think it is their business and not ours.

Mr. Mitchell: I think, however, it might be worth while at least for the committee to hear if there is any comment from the deputy minister about those areas covered under administration. I do not know whether you wish to; you may not wish to, Mr. Crosbie.

Mr. Crosbie: I do not know whether I can add anything to the very useful discussion we have had over the last few weeks. I would just say the proposals in the white paper are the ones we would pursue. If the committee chooses not to comment further, they would at least know that is the direction we would be taking.

Wherever there is legislative change, I think it follows this will be reviewed again. There is also some internal review again at Management Board on the whole issue of whether the organizational change we propose is justified. Before we are able to finally do that--and this comment was made this morning--we need a clearer indication of which functions in the white paper are going to be implemented.

Mr. Renwick: My view may be very legalistic. I just do not think the case has been made to us. I do not think, on the other hand, we should second-guess what the ministry proposes to do.

Mr. Mitchell: I accept that.

Mr. Crosbie: The organization, I think, would follow the other decisions on other proposals.

Mr. Mitchell: Sure.

Mr. Crosbie: Then we would have to organize hearing them out.

Mr. Renwick: I would hope this chart would find its way into the report as part of the report. I think it should have the note on it with reference from the ministry's point of view, the note being processed through Management Board with whatever change there may be.

I assume they are in a much better position than us to assess whether whatever is involved in it--whether it is reorganization, restructuring, additional cost--is justified in the light of the presentation the ministry may feel much more free to make to them than they are prepared to make to us.

Frankly, I am not greatly interested in getting into a cost examination of whether it was or was not a regulatory failure. At this point in the world, I think it is a dead end for us to pursue.

Mr. Chairman: In other words, let us get on with the business at hand, which brings us to item 2 on page B-2. Basically, it proposes that a new position of commissioner of financial institutions be created, reporting directly to the minister and to be filled by a senior person from the professional community with the primary responsibility to:

(a) provide general and specific policy advice to the minister on matters affecting the provincially-regulated financial institutions, including loan and trust corporations, insurance companies and credit unions;

(b) act as a watchdog for the public interest by maintaining close contact with public concerns and having the power to hold hearings and review issues affecting the loan and trust industry; and

(c) hear appeals from decisions of the registrar.

Mr. Renwick: I am a little bit worried about whether the word "advisory" is an ambiguous term in the light of what is going to take place. Perhaps my question really is, is this an embryo commission which will blossom forth as a full commission in the way in which, say, the Ontario Securities Commission operates?

2:20 p.m.

Certainly it appears to have both aspects of it, because the commissioner is going to be the chairman of the committee. It is going to hold public hearings and it is going to hear appeals, which is a quasi-judicial function and a function the securities commission performs in its quasi-judicial role.

Apparently it is proposed that members of the advisory committee will sit on appeals in certain cases, the way sometimes a single commissioner hears a securities matter and sometimes two or more of them do. I suppose, acting alone or in conjunction with other members, they could be authorized by the minister to hold inquiries under the Public Inquiries Act. That whole framework would indicate to me we have started down the road towards a fully fledged commission, if circumstances warrant it in the future.

I wonder whether we would not be better off to say right away that this is going to be a commission and that there are going to be members of the commission and they are going to start to function as a commission in relation not only to loan and trust corporations, but also to the whole range of financial institutions. I do not know if I have expressed my concerns well, but that is the way the ultimate intentions of the ministry come through to me.

Mr. Chairman: One of the problems we could be confronted with is we have no idea how busy or how effective the new

commissioner would be. Maybe that is why they are talking about an advisory commissioner instead of a fully fledged commissioner.

Mr. Gillies: Mr. Chairman, following on Mr. Renwick's thoughts, I like the idea of having a place for appeals from the registrar's decisions to go. Is it intended there would be an appeal from the decision by the commissioner and, if so, would that be to the minister or to the Lieutenant Governor in Council?

Mr. Crosbie: No. The basic intent was to recognize the present situation where a lot of the decisions the registrar is called upon to make are in the nature of business decisions, such as whether somebody should have an increase in borrowing power and whether he makes recommendations in respect of that, various decisions where he might wish to restrict the company in some way as proposed by various recommendations. Where business matters are concerned, there should be somebody other than the registrar to whom the registrants can appeal.

It was seen that the commissioner, either alone or with members of the commission who would all presumably have very good business sense, provided an adequate appeal from that type of decision. With the exception of those that go through to the Lieutenant Governor in Council, that in effect would be the final decision.

The intent was that on those business issues the commissioner would make the final decision. On questions of law, the appeal would be to the courts. That appeal could take place. If it is the commission that makes the error, its decision would be appealable to the court.

Mr. Gillies: It is intended that the commissioner, on taking office, would divest himself of any interest he had in the loan and trust industry. I can appreciate it would be desirable to have someone from the industry with hands-on experience, but I am sure the ministry is aware of the possibility of any number of conflicts coming up, if the commissioner still had, I suppose, even directorships.

Mr. Crosbie: I would suppose we would follow the practice that is applied in the case of the chairman of the Ontario Securities Commission, where there is a complete divestiture, or at least a blind trust; certainly he cannot have any ongoing interest in any securities or matters of that kind.

Mr. Gillies: What about the members of the advisory committee? Same again?

Mr. Crosbie: I do not think we go to the same extent on the members of the advisory committee.

Mr. Gillies: But they would be expected to exclude themselves from any case that could provide a conflict?

Mr. Crosbie: Certainly, yes.

Mr. Renwick: What will be the nature of the commissioner's relationship? Let me disclose my particular bias. I

happen to believe that within the community it is likely you are able to use a revolving-door concept so that people will move in and out of this role the way it has been established over the years with the chairmanship of the securities commission. If that is so, are they not members of the civil service then?

Mr. Crosbie: No.

Mr. Renwick: The chairman of the commission is not a member of the civil service?

Mr. Crosbie: No. He is employed on a contract of service--an order in council appointment for a term of years.

Mr. Renwick: Do I take it that it would be similar to the securities commission, a three-year appointment?

Mr. Crosbie: Yes. I would think so.

Mr. Renwick: Would it then be hoped that people could move in and out and that the connection with the street could be maintained?

Mr. Crosbie: One of the difficulties, as we have found with the chairman of the securities commission, is that for some people there is a real penalty going into a job where you have to divest yourself of all your financial interests, or tie them up, and presumably take a considerable reduction in income to serve in a position like that. Most people are only prepared to afford to do it for a relatively short period of time. But I would see it functioning in a very similar manner to that of the chairman of the commission.

Mr. Renwick: Without any disrespect to the way in which it has been done, basically the way in which the securities commission chairmanship is operating at the present time is a lot more sensible and intelligent way than it was operating before, when it was generally a person in retirement or on the verge of retirement who took on the chairmanship and who was sort of a grandfatherly figure, which was not adequate to deal with all the current development in the street. I certainly would feel that we should make a comment with respect to that viewpoint.

With respect to the powers, while the powers are there, they are extremely broad; you are really establishing an office, if not of immediate immense power and authority, at least potentially with a great deal of authority, particularly when he reports directly to the minister.

In a parliamentary sense, the second point we have to make certain is that the commissioner does not get some delusions of grandeur that he is not responsible through the minister to the assembly or that the minister is not responsible in the assembly for the actions of the commissioner.

I am not talking about his quasi-judicial functions, which have a particular role, but the kind of thing we encountered in Re-Mor and Astra where we suddenly got a letter from the chairman

of the securities commission announcing he was not accountable to the committee or to the Legislature because of some strange relationship with the minister.

I think we have to be clear that he is as responsible to the minister and that the minister in turn is identically accountable to the House as the minister is accountable for you, sir, as deputy.

Mr. Crosbie: I would think that would be the relationship. I cannot see it in any other context.

2:30 p.m.

Mr. Renwick: While you put yourself and the deputy in the minister's office box, the fact of the matter is that the report says the commissioner will report directly to the minister. I do not know whether that means he is going to be able to completely bypass the deputy, should he choose to do so. That kind of problem often leads to delusions of grandeur among people who do not understand the workings of the parliamentary system.

The third comment that struck me was that in the light of the problems that have appeared, it would be extremely helpful and advisable, without naming all the bodies that should have the power of recommending appointments to the advisory committee, there should be some way whereby the Institute of Chartered Accountants of Ontario, for example, should be called upon to nominate a person.

The Law Society of Upper Canada should be called upon to nominate one or two people. The appraisal society or whatever it is, these various groups, the insurance association and trust companies association, whatever they are, should be able to recommend appointments, rather than just leave it up in the air for the government to decide in its own wisdom how it will go about selecting the people who will sit on those committees.

I say that not because that would not necessarily be done in any event on a number of occasions, but I think it is important that those bodies understand they have some direct responsibility in these matters. The Law Society of Upper Canada, for example, has to understand that it is going to recommend the appointment to this advisory committee because there have been problems in the past related to the conflict of interest rules of the profession, my profession. Similarly with the Institute of Chartered Accountants of Ontario and whatever else. That is another item in this commissioner's office I would like to see us comment on.

Those are the particular things that come to mind, and I finish where I started. I am not absolutely certain what you are thinking about in this one-man commission with an advisory committee, because I think it is dangerous to have a one-man commission with an advisory committee exercising disciplinary or inquisitorial or investigative powers.

If the commissioner is going to do it, fine, but there is something a little strange to me about members of an advisory

committee performing similar roles. Maybe it is only in the name. Maybe we should say he should have other part-time commissioners and an advisory committee and separate out the functions of the part-time commissioners from the advice function that is going to be performed.

Mr. MacQuarrie: I think Mr. Renwick has led into some of my concerns here. In the position of commissioner you have him exercising an appellate function and with the ability to proceed on his own initiative to carry out hearings and review issues etc. that affect the loan and trust industry.

In connection with that, since he is the commissioner of financial institutions, would he also be able to exercise the same sort of duties with respect to insurance companies, credit unions, co-ops and the rest of it?

Mr. Crosbie: Yes.

Mr. MacQuarrie: I would take it that--

Mr. Crosbie: The answer to that question is yes, Mr. MacQuarrie. As you can see, it is going to deal with this division; so for whatever functions are in the division, the minister would be at liberty to call upon this commissioner and the advisory committee to provide assistance.

Mr. MacQuarrie: One other function in the division--I guess it is in the division; it is not listed there--is the Ontario Share and Deposit Insurance Corp. Is it a separate entity?

Mr. Crosbie: We have a number of special purpose organizations like this which we have not filled in on the chart.

Mr. MacQuarrie: They would be on the larger chart?

Mr. Crosbie: Yes. The facility fund is not shown here, for example, nor is the Registered Insurance Brokers of Ontario. There are a number of agencies of that kind that are examined by officials.

Mr. MacQuarrie: Mr. Renwick touched on it in dealing with the relationship between the commissioner and this advisory committee. Depending entirely on the personality of the commissioner, I suppose the committee could become a commission in terms of the appellate functions of the commissioner; or if he were a very strong individualist, he might not make too much use of the committee at all.

I really think Mr. Renwick's comments in respect to part-time commissioners and the role of the advisory committee should be distinguished. I can see the white paper having the advisory committee sort of serving as adviser, with the capability of assisting in the appellate functions. I find this really leads to some confusion, and it would depend entirely on whether the commissioner was one who believed in sharing his responsibilities with others or whether he did not. It would depend on the individual.

Mr. Crosbie: Mr. MacQuarrie, it is interesting that you make that observation. One of the matters we had very much in mind in setting up this structure was the problem of appeals. The other consideration was the question of whether the assistant deputy minister should hear the appeals. It was our sense of the situation that the ADM is much more likely to be involved on a day-to-day basis with the various directors, superintendents and the registrar on some problem areas and would be aware of them. He might have been consulted for advice by the registrar or the superintendent of insurance. Therefore, he would not be in a position to fairly hear an appeal from a decision of the registrar or the superintendent.

We thought if we split them off to one side, and clearly he has no line functions, the commissioner should not be sort of called in to advise the registrar on a day-to-day decision involving a trust company. If you are talking about general policy applying to trust companies, they may wish to consult the commissioner and then the advisory committee for advice on a particular business practice of trust companies with which you may wish to deal.

Mr. MacQuarrie: Your comments tend to clarify the issue considerably, Mr. Crosbie, but I am still left with a problem. Where we have the commissioner established to provide the minister with general and specific policy advice, could the minister not be the conduit of having the commissioner influence the registrar, or vice versa with the commissioner, in terms of his specific policy advice to the minister on matters affecting a certain thing being involved somewhat in the earlier decision-making in a reverse sort of way?

Mr. Crosbie: To answer that question I would have to say that if we have a problem here, we have about 20 of those problems in the ministry because we have all sorts of people with statutory powers. We have four registrars in the business practices division who report to the assistant deputy minister or to an executive director. If a minister is determined he is going to interfere in the statutory process and lean on a registrar to make certain decisions, that would be unfortunate.

2:40 p.m.

Mr. MacQuarrie: But I could picture the commissioner becoming aware of a problem in one specific area of the industry, relaying his concerns to the minister, the minister in turn passing those concerns on to the deputy, the assistant deputy and down the chain to the registrar, with the registrar acting, and then an appeal out of that action coming from the commissioner.

I do not know if there is any answer to how to separate more clearly the commissioner's role and his independence.

Mr. Crosbie: Is that any different from, say, the Ontario Securities Commission's recommending regulations which are then passed by the minister? Then they have a hearing in respect of the violation of those regulations and they are interpreting their own policy.

Mr. MacQuarrie: The only point I was trying to make was that the white paper is trying to make this particular office as independent as possible in terms of its appellate function and then saying it might not be quite as independent as we had hoped.

Mr. Crosbie: I guess the answer, to completely satisfy that line of thought, is that one would have to have a totally independent appellate body. They would not be involved in an advisory capacity to the minister, and you would perhaps choose them at random or have them sitting as a panel available at any time to be called upon to hear an appeal.

Mr. MacQuarrie: That then leads to the question of whether the commissioner should be strictly in an appellate role, with the advisory committee being the ones to provide the policy and advice assistance to the minister, rather than through the commissioner, and let the commissioner sit as an independent appellate agency.

The thing seems a little bit complicated the way it is. Maybe I am making it more complicated by my suggestion.

Mr. Crosbie: I can appreciate the concern you have. Maybe I have become too used to living with that sort of problem. Take the racing commission, which hears appeals from the stewards and judges on the tracks. They may very well have been the organization that set the policy. If it is being violated by a jockey or trainer or something, it comes before them.

Mr. MacQuarrie: I have heard complaints about that too.

Mr. Crosbie: Yes, but that is the problem.

Mr. MacQuarrie: Yes, I know.

Mr. Crosbie: The pension commission is another example. They set the rules and somebody may be appealing to the commission, although they are not an appellate role.

Mr. MacQuarrie: I thought the point should be made. I heard Mr. Renwick's remarks and I was just following along some of the comments and suggestions he had made--maybe carrying them a little further than he would like me to carry them.

Mr. Renwick: Going only by memory, which is sometimes faulty, my recollection of the Securities Act, the racing commission and a number of those is that you usually find right in the statute that the commission is responsible for the administration of the act. That means they have the whole bundle.

This is not saying the commissioner is going to be responsible for the administration of all these acts. The administration is going to continue in a reorganized form very much the way it has in the past and, you hope, with various improvements and the introduction of an investigative arm and some rationalization of it.

With this advisory committee you are setting the

commissioner off to one side and that, as Mr. MacQuarrie said, is sort of the hinge of what I was saying. The securities commission is responsible for the administration of the act. I think those are the exact words that are in there. That is what led to this assertion that they did not have any responsibility to the assembly, that they were a separate and distinct body without any responsibility. I think that died. That answer was over because I think we finally recognized a Speaker's warrant against the commission.

Mr. Crosbie: So did we all.

Mr. Renwick: Yes, but I think that died at the time.

Again, the Ontario Securities Commission has power. It is all very well to talk about it holding inquiries with all the necessary powers of a commission under the Public Inquiries Act--that is a very extensive authority--and the other questions with respect to appeals and so on. But the gut enforcement provision of the securities commission is one that says it can investigate where it has reasonable and probable cause to believe there has been a breach of the Securities Act or the code in relation to securities, or something to that effect. There are very formal powers of investigation.

Without opening the argument, I felt the commission acted illegally in one instance, and I put it on the record. That is what leads me to my concern here. If I am being told they are going to have the powers of a commissioner under the Public Inquiries Act, we have got to be very clear about what they do, how they do it and what that authority is. Under the Securities Act, there is a fairly well-framed power of investigation. If they follow the steps, they can recommend that charges be laid. The minister has very little discretion if they do recommend that charges will be laid.

Here we do not seem to have any such tightness or containment around this commissioner. As the member for Carleton East (Mr. MacQuarrie) said, a lot depends on the character of the person and the nature of the man. If you are a member of the advisory committee, you have no status as a member of the advisory committee, unless the commissioner calls on you to do something, whereas a part-time member of the commission has a status, which means he has to be involved in it, unless the chairman is a nut and thinks he can do the whole thing himself without the assistance of his commissioners. The burden of the work is there.

It seems to me what you may want to reach towards is to establish this commissioner with some relatively clear jurisdiction and some part-time members to cover this wide group of so-called financial institutions and others you need to deal with. Then maybe the part-time members and the commissioner can also have the power to advise. You might want a separate and distinct reachout to the business community or financial community for that kind of committee.

When you tie that in with the new investigative powers, it seems to me somehow or other you have to rationalize what the office is going to be and what the commissioner's authority is going to be. I am a little bit apprehensive of just starting off in this more or less ambiguous and nebulous way, seeing how it goes and then fitting the statute to the office at some later date.

Mr. Chairman: Is it not the prime function of the commissioner to hear appeals from the decisions of the registrar? Is not the main reason he is being created to give companies that avenue of appeal?

Mr. Renwick: If it specifically said the commissioner was to do that, I might have argued one way or the other. Here it says the commissioner and, as occasion requires, members of the advisory committee can also be involved in that. Similarly, to hold inquiries under the powers of a commission under the Public Inquiries Act, it can be the commissioner alone or in conjunction with other members of the financial advisory committee.

2:50 p.m.

Mr. Crosbie: Mr. Chairman, commenting on your observation, I would not characterize it as the prime function of the commissioner. When we were establishing this position, what we were particularly mindful of was the rapid rate of change occurring in the financial world today and the capacity, if I can put it that way, of the bureaucracy, which is slightly somewhat insulated from the financial community, perhaps not to be as much in touch with the changes as someone working right in it would be.

One of the prime functions of this commissioner and advisory committee was to provide a mechanism whereby the ministry, the minister or the division could at all times be kept up to date and in touch with current developments in the financial community and have a mechanism for investigating or exploring any new developments. For example, if new developments came along and it looked as if a new regulatory process should be adopted, then you had a mechanism for investigating, getting a report back and recommending legislation.

The appeal process was an additional function. I really think the prime purpose of the commissioner and the advisory committee was that of keeping the minister and the ministry very closely in touch with the real world and its changes.

Mr. Renwick: Permutations and combinations that come out of a discussion such as this would lead me to believe that it might be worth your while to consider the advisory committee, while still being chaired by the commissioner, should be a advisory committee to the minister. Tie the advice question directly to the minister.

To have the committee chaired by the commissioner is to make sense, but in addition to that, as a separate part of it, say there will be a commissioner and one or more whatever they call them--associate commissioners or whatever they are--as occasion

requires, in order that function be separate and distinct from his role as chairman of the advisory committee advising the minister.

Mr. Crosbie: You mean in the appeal function you have certain commissioners designated as appeal commissioners, in effect?

Mr. Renwick: Yes, or have the commissioner and some others set aside to deal with these appeal things and the question of holding commissions of inquiry, if that is necessary in any investigative work.

I would probably feel a little bit happier if that advisory committee was specifically designated as an advisory committee to the minister to be chaired by the commissioner, and that, in addition to the commissioner, there would be power to appoint one or more associate or assistant commissioners as occasion requires and as the office does or does not meet the needs of the industry in a flexible way over a course of time.

Mr. Crosbie: Certainly, there was a sense of having a situation where the core of the advisory committee might not represent all financial institutions, but if you had an appeal coming through from a particular part of the division that was not represented, there would be the capacity to go out on an ad hoc basis and call somebody in to sit with the committee and the commissioner on an appellate capacity.

That step is not discussed in any detail, or perhaps it is just hinted at, in the white paper because the appeal process to enable us to do that would require amendment to a series of other acts. The Insurance Act, the Cemeteries Act, all the other various acts that are administered by the division would have to be amended or there would have to be some blanket amendment in perhaps the ministry act to establish this appeal process for financial institutions other than the loan and trust corporations.

Mr. Chairman: Anything further on proposal 2?

Mr. Van Horne: I may have missed this in what Mr. Renwick said, but I gather he is looking at another line of accountability between the organizations and elected people as opposed to staff people. That may be what you are doing when you put that advisory committee in direct line with the minister, who is an elected person. For what it is worth, that is a theme that is gathering more community support in terms of thinking. I do not know if we have to put into our mind at times the view of someone in the street--one of our constituents, for example.

Mr. Renwick: I have a final comment on this, because we have to move on and we will be undoubtedly back at it again.

I would not want to see this commissioner suddenly expanded into some hydra-headed monster that is going to take over the Commercial Registration Appeals Tribunal and all those others. I do not quite understand how the cemeteries come into this. I can see all the others. I can see the credit unions, the co-ops, the

insurance companies and the loan and trust corporations and, as an adjunct to that, the motor vehicle accident claims. Those kinds of things all fit into similar categories; I can see that.

Mr. Crosbie: Cemeteries get in there because they administer trust funds for prepaid burials or perpetuity funds.

Mr. Renwick: I see, those perpetuity funds. I think I have beaten that to death as far as I can.

Mr. Chairman: We can move on to B-3: "An independent financial advisory committee is also proposed consisting of experienced persons in the financial and business community which would serve as adviser to the commissioner, with the capability of assisting in the appellate functions." I think you have pretty well tied that in.

Mr. Renwick: We have covered that.

Mr. Chairman: Number 4 is on page B-5: "The present position of executive director of financial institutions should be replaced by an assistant deputy minister with responsibility for the administration of all branches within the ministry regulating financial institutions in Ontario."

Mr. Mitchell: It appears that has already been done.

Mr. Crosbie: The appointment of the ADM has occurred, yes.

Mr. Chairman: We will move on to page B-6, item 5: "The registrar of loan and trust corporations should be given much broader and more far-reaching regulatory powers." I think we have pretty well dealt with that on B-1; it is pretty well the same line.

We will go to page B-8, item 6: "The position of assistant deputy minister should be separated from the positions of registrar of loan and trust corporations and superintendent of insurance."

Mr. Mitchell: That has been done.

Mr. Chairman: That has been done. Let us move to B-9: "A separate investigative unit reporting directly to the assistant deputy minister should be established with special capability to investigate irregularities and problems in all financial institutions regulated within the ministry."

Mr. Mitchell: Again, it appears from the organization chart, Mr. Chairman, that the ministry has implemented that--at least from this organization chart.

Mr. Crosbie: This organization chart was a suggested organization; it does not mean it is all in place.

Mr. Mitchell: I did not say it was in place. If I did imply that, I apologize. I meant the ministry has recognized that, and from its organization chart it appears it is going with that sort of recommendation.

Mr. Breithaupt: I presume, Mr. Chairman, when we have a recommendation such as number 6, where this has been announced and an appointment has been made, and similarly in item 7, where the ministry is proceeding to deal with that suggestion in however the final detail may be and it is at least proceeding, that we would simply observe upon that, since the final detail of just how that may be set up is not anything over which we have immediate control.

3 p.m.

If that is the way our research persons simply write up the observation, I presume that is all we have to do on those two particular points.

Mr. Crosbie: I believe so.

Mr. Gillies: Just on a point of order, Mr. Chairman: I talked to a couple of people in the last few minutes, and apparently the snow situation is being treated fairly seriously. It is not a problem for me to be here until 4:30 p.m. because I am not intending to go beyond downtown any way, but the word is that anyone who intends to go further than five or six blocks from these buildings before rush hour--

Mr. Breithaupt: Should have started at noon.

Mr. Gillies: --should have started before now.

Mr. Mitchell: I do think it is a good point, perhaps not so much for the members of the committee themselves but certainly for those staff who are with us today. Several of them have a fair distance to travel. Most of us are reasonably close and, bearing that in mind, I am sure the committee might well recognize--I know the concern was expressed to me by Veronica, who is working with the committee--she is not here right at the moment but that concern has been expressed ever since noon hour.

Mr. Chairman: She has probably left.

Mr. Mitchell: It may well be, but I think we have others to concern ourselves with as well. I think this committee is moving reasonably well. If it is within the committee's wishes, I think that is something we should take into consideration today and perhaps adjourn.

Mr. Gillies: I hate to break into our time, but apparently most offices in the building are closing and staff are fleeing to their homes.

Mr. Breithaupt: Again, I am up on Bloor Street and other members are conveniently at hand, but if there are particular staff persons who have a distance to attend, then we should attempt to accommodate them if we can.

Mr. J. A. Taylor: Why do we not plough ahead?

Mr. Mitchell: With that great comment, I would propose, in light of what has been relayed to us, perhaps this is an appropriate time to adjourn and reassemble, we hope, at 10 o'clock in the morning.

Mr. Chairman: I would agree with Mr. Breithaupt on that if the staff feel they have to go, but most of us can be here. Of anybody in this room, I have about the farthest to go, 13 or 14 miles, and I am not going to have any difficulty with it. I think this is very important and I really do not think we should give up the time, but it is up to the committee members. If you want to adjourn, I have no objections.

Mr. Mitchell: That is what we are talking about.

Mr. Gillies: I just raised it as a point of information for people who do have to travel any distance. It is certainly no inconvenience for me to be here.

Mr. Crosbie: Speaking only for myself and Mr. Thompson, we are at the convenience of the committee. We are prepared to stay.

Mr. Chairman: We have heard from two of the parties concerned. I am waiting with great anticipation for the third party.

Mr. J. A. Taylor: Nice try, Phil.

Mr. Breithaupt: Perhaps we could agree to complete this section and that might mutually accommodate us.

Mr. Renwick: What about research staff? Is that a problem?

Mr. Nigro: We were just discussing that. Both of us live within reasonable convenience of the subway, so it should not be too bad.

Mr. Gillies: I think Mr. Breithaupt has the right idea. Let us finish the section; we could probably do it in half an hour.

Mr. Chairman: If we have finished item 7 on page B-9, the investigative unit, we have pretty well finished this section. If you want to return where we were this morning, the part on "Carrying on Business in Ontario," we can finish that section or proceed with it. It seems to me that time is limited for us anyway, and since we do not sit on Fridays, we should possibly use some more time to finish this off. I do not think we are going to have that much snow in the next four or five hours of the day.

Mr. J. A. Taylor: By the time we finish this dissertation it will be all melted.

Mr. Breithaupt: Let us at least review the miscellaneous items. That might be sufficient to put us pretty close to 3:30 p.m.

Mr. Chairman: On page B-10 we have the miscellaneous section. There were a number of exhibits, 6, 7, 12 and 14, and on B-11 there is exhibit 19. There are some recommendations from the select committee and a few of the other trust companies. Is there any discussion?

Mr. Breithaupt: The matter of examination staff might be referred to. You will recall the comment of having persons at least available, the two contacts per company or however it is sorted out on reorganization. Perhaps we could inquire as to what the examination staff was in 1975, what it is now and what is enough to do the job. Hopefully, the numbers will all be the same.

Mr. Thompson: In 1975, there were eight in the examination staff. In 1980, that number increased to 10.

Mr. Renwick: It takes five years to get two people?

Mr. J. A. Taylor: But their skills really improved over that period.

Mr. MacQuarrie: You have to take the experience factor into account.

Interjections.

Mr. Chairman: Carry on, Mr. Thompson.

Mr. Thompson: In 1981, we added two investigators. In 1982, we added two additional ones.

Mr. Chairman: That gives us a total of how many?

Mr. Thompson: The investigation has to be kept distinct from examination but basically it is in the same area. There are now a total of six in investigation and there are two contract people added in the examination area. That makes a total of 12 for now in the examination area and a total of six in the investigation area.

Our estimate on the examination side is to implement these proposals we would require classifying the contract positions as permanent and adding three more, so there would be an additional five examination staff members.

Mr. Renwick: That would make a total of 15 and six investigative staff?

Mr. Thompson: Yes.

Once you get into the investigative staff, that covers all financial institutions, not just loan and trust.

Mr. MacQuarrie: Even the cemeteries.

Mr. Thompson: Yes, but the 15 would be all loan and trust.

Mr. Chairman: Is there anything further in the miscellaneous section committee members would like to discuss?

Mr. Renwick: I do not think we could comment on the adequacy of the staff. All we can say is what we tried to say before. If you need more staff, you should damned well get it.

Mr. Chairman: Agreed.

There being nothing further on the miscellaneous section, that pretty well brings us to the end of the section on administration. Possibly we should return now to page C-8 on the carrying on of business in Ontario.

Mr. Renwick: That last one on the trust companies is wonderful. The association questioned the necessity of creating such a large senior administrative structure that could result in substantial delays in processing business. I just thought there could be an argument the other way.

Mr. Chairman: On page C-8, we are at number 6. It basically says, "Persons proposing to acquire or merge with an existing loan or trust corporation in Ontario should satisfy the same standards and requirements as those who incorporate a new corporation."

Mr. MacQuarrie: I think we have had our object lessons on that.

3:10 p.m.

Mr. Breithaupt: I presume the earlier comments with respect to the grandfathering approach would continue under a new system. In other words, if there were the amalgamation of two of the smaller companies, which then proposed to deal with the estates, trusts and agencies business on a larger scale, they would be required to have a substantially higher capitalization, just as a new company or an otherwise growing company would be so required.

Mr. Crosbie: Yes, I think that is a correct interpretation.

Mr. Chairman: Anything further on number 6? If not, we can move to C-9 and number 7, which is, "The registrar should be given the power to require subsidiaries of loan and trust corporations to cease unacceptable business or financial practices."

Mr. Boudria: Would that cover the case of agents who are acting on behalf of subsidiaries? We were talking about the scenario this morning of an individual whose business is selling guaranteed investment certificates or registered retirement savings plans on behalf of a trust company. Are we saying the registrar would also--

Mr. MacQuarrie: It is subsidiaries we are talking about.

Mr. Boudria: Yes, I recognize that, but what I am asking is whether that power would also extend to agents acting on behalf of subsidiaries?

Mr. MacQuarrie: My interpretation of it would be yes, if the agents were acting on behalf of subsidiaries who were engaged in some unacceptable business practice.

Mr. Boudria: What if it is not the subsidiaries who are acting irresponsibly but the agent himself?

Mr. MacQuarrie: In the items that are under discussion here today, estate agency sales of RRSPs, there is nothing unacceptable in that sort of thing as long as they make full disclosure to the purchaser.

Mr. Boudria: I am not saying that is unacceptable. I am asking whether if such an individual happens to act in a way that is unacceptable--

Mr. MacQuarrie: If he is acting as an agent in a way that is unacceptable and if it is in a--

Mr. Breithaupt: It is the principal's responsibility.

Mr. Chairman: That is right. He is technically an employee.

Mr. J. A. Taylor: Is that the same mandate as the registrar has in regard to the parent company?

Mr. Thompson: Yes, I think that is a principle. There is something not being done indirectly that ought not to be done directly.

Mr. J. A. Taylor: I grasp that and agree with it, but I am wondering if it extends further in regard to a subsidiary business.

Mr. Crosbie: When we brought this recommendation in, we realized the principal or the trust company had certain prohibited activities. As we have seen, this is a regulated industry. They are allowed to do certain things subject to very specific controls in the act. For example, a parent trust company cannot carry on a manufacturing business. Now if it invests in a subsidiary and the subsidiary is set up for the purpose of carrying on a manufacturing business, in my opinion that would not be an appropriate subsidiary for a trust company to be operating.

Mr. J. A. Taylor: It is exceeding the jurisdiction of the parent company.

Mr. Crosbie: That is right.

Mr. J. A. Taylor: What I am getting at is, should that not be tied in to coincide with the--

Mr. Crosbie: In essence, that is what we are talking about doing. The test for the parent would be applied to the subsidiary.

Mr. J. A. Taylor: But it does not say that here. The way it reads is pretty broad-reaching. The present registrar excepted, it would be pretty arbitrary and high-handed just to throw someone down.

Mr. Breithaupt: Particularly when minority investment interests are allowed.

Mr. Gillies: It seems to me to be so broadly worded that it could lead the registrar into having to involve himself in areas that have nothing to do with financial management, loans, trusts or anything of that sort. It seems to open up a real can of worms.

Mr. Breithaupt: It is another judgement call that may be an interference in the administration of a business.

Mr. Chairman: And it could be appealed to the--

Mr. MacQuarrie: The first question that comes to mind here is, what is a subsidiary? Is it a controlled company, wholly owned? Is it a company in which the main corporation has a substantial interest?

Mr. Thompson: Yes. I think the regulations that exist fairly well clarify the types of corporations that may become subsidiaries of trust companies, and basically they require control to exist in the trust company. The thrust of the regulation is to determine how much of the trust company's money may drop down into the subsidiary and how that is treated as an investment. There is also a provision in there covering prohibited investments, but what we were looking at here was that basic principle not to do indirectly what the trust company would not do directly. I think that is a good point that has come out of this discussion.

Mr. MacQuarrie: Yes. This is what sort of troubles me. When the member for Prince Edward-Lennox (Mr. Taylor) mentioned that the subsidiary could not do anything that the main corporation could not do, I was trying to visualize the situation that was proper, ethical and all the rest of it in terms of the subsidiary operations that were broader than the principal corporations.

Under the Trustee Act, a trust company can invest in any of a number of investments. Assuming the estate was big enough, they could pile it all into Bell Canada stock. You could draw some fairly ridiculous and far-fetched possibilities out of that, depending on the size of the estate and how they diversify and all the rest of it.

When you are talking about a subsidiary controlled by the major company, whether we draw the line, as the member for Prince Edward-Lennox suggested, at a subsidiary not being able to do anything the principal could not do or whether we are not quite so hard and fast on drawing the line, we had evidence here of mortgage brokers owning or being in control of a trust company and the rest of it. I do not know if the reverse is true. I do not think it can, but what sort of situation are we getting into here?

Mr. Crosbie: Maybe I am repeating myself, but our thinking on this recommendation was that the act does proscribe the use of funds for the purpose of protecting depositors and ensuring there is sufficient liquidity and all that sort of thing. We were concerned that by passing the money through to a subsidiary, if the subsidiary was not similarly controlled, then it might use the funds for purposes the parent could not, might tie them up in types of investments that would make them unavailable to the depositors in the event there was a liquidity crisis or something of that kind. Therefore, we felt the same rules generally that applied to the parent should apply to the subsidiary in terms of the nature of business activities.

Mr. MacQuarrie: What types of subsidiaries of loan and trust corporations are in existence now?

Mr. Thompson: Taking the trust company, there is the right to have a foreign trust company, which nobody has used yet. There is the right to have a real estate corporation and you can break that down into--

Mr. MacQuarrie: Quite a few of them are using that right.

Mr. Thompson: Yes.

Mr. MacQuarrie: Guaranty Trust, Canada Permanent, yes.

3:20 p.m.

Mr. Thompson: You can break that into two segments really. A real estate brokerage is one segment of it; the other aspect would be the true sort of investing in real estate.

The third type is the mutual fund corporation, which has not been utilized. Then there is the mutual fund sales or management corporation shares, which have not been utilized. A trust company can own shares in a loan corporation. Then there is the general overall class of ancillary business corporation. That is an activity that is defined as ancillary to the operation of the trust company.

Mr. Breithaupt: This could be a data processing operation or something like that?

Mr. Thompson: Yes, it might be. I look at it from the point of view that it all somehow relates to an activity that the trust company can do itself. Once you get beyond that, the regulations clearly say the subsidiary cannot make an investment that the trust company would be prohibited from making. What we

are looking for is whether that is simply adequate to control the investment.

We are dealing with a regulated company with closely defined corporate powers. These subsidiaries can exist with very broad powers and there could well be activities, as the deputy has mentioned, such as getting into a manufacturing business--

Mr. Breithaupt: You could go from a data processing service to the preparation of software programs to the eventual development of the various hardware items for particular purposes, and in that way go step by step away from what that trust company was originally incorporated to do.

Mr. Thompson: Yes. That is the type of activity we were looking at.

Mr. Gillies: I am thinking of the instance of a real estate operation that is subsidiary to a trust company. The business practices of the real estate division would still be subject to the jurisdiction of the real estate people in your ministry as opposed to--

Mr. Thompson: Yes.

Mr. Gillies: My concern is that the government has paid lipservice in the last number of years to moving towards self-regulation in the real estate industry and I would hate to think we may inadvertently, through this regulation, add to the possible bureaucratic entanglements the real estate operation could encounter.

Mr. Thompson: No. They are still subject to registration under the Real Estate and Business Brokers Act. Whether it be the trust company or its subsidiary that is engaging in the activity, both are subject to it.

Mr. Gillies: If a subsidiary real estate operation made what was judged to be an inappropriate investment, it would still be dealt with by the real estate people and not by the registrar.

Mr. Breithaupt: Initially at least.

Mr. Crosbie: Just remember that the books of account or the records of the subsidiary feed through to the capital base of the trust company. So if they went out and made an inappropriate investment that affected the capital of the subsidiary, that, in turn, would affect the capital of the parent and the registrar might deal with it by adjusting the capital base of the parent.

Mr. Gillies: So they could be subject to regulation by both?

Mr. Crosbie: They would certainly be influenced by the decisions of the registrar on their investment, yes.

Mr. Renwick: This may be quite impossible, but it seems to me this is one area where the disclosure principle makes a lot

of sense. The act prohibits certain activities and all the rest of it, but the complementary part of that is, whether we are talking about holding, subsidiary, affiliated or investment corporations, or whatever that web of companies is--I would also include partnerships, limited partnerships and sole proprietorships because there are some ingenious practitioners who could skate around the partnership, limited partnership and the sole proprietorship to defeat these things.

It seems to me the basic thing a regulator has to know is what all these companies are for and ensure, somehow or other, whatever designation you make, that they show the whole map. I do not think that would be all that difficult.

Take Royal Trust. Assume for a moment that it has proliferated as much as anybody. Maybe Murray could give a better example. It should be possible, without any onerous requirement, to require them to disclose the names of all corporations and so on--if you can do it by saying holding corporation, or whatever it is, fine--so that the regulating authority can have some idea whether or not they fall within the permissible activities of those companies.

The disclosure principle puts a real obligation on the management of the regulated company to give you that information. When you have that information, you could pretty easily, for your own views, decide whether there had been an infringement or whether further inquiries were essential without getting into the view of appearing to deal only on the prohibition and not have the information.

Mr. J. A. Taylor: Would not the registrar have that authority now in terms of the parent company to ensure that there are disclosures?

Mr. Renwick: I am not certain whether they would have. The Traders group as a whole is into all sorts of things. Somehow or other, wherever the trust company falls in the chart, all of the spokes and wheels should be available to the ministry. I do not think they are. They may be.

Mr. J. A. Taylor: Maybe Mr. Thompson can enlighten us on that. Are there areas in regard to a trust company's operation that could remain secret or undisclosed? Is there a way of getting at that, whatever the information is that you require?

Mr. Thompson: I would hope so, even if it is conducted in a subsidiary operation.

Mr. J. A. Taylor: No, I am talking about the parent. What I am coming at is whether you need more power as a registrar to deal with subsidiaries than you have in dealing with the parent.

Mr. Thompson: We will address that later on. We have asked for similar but a little different powers to deal with a holding company.

Mr. J. A. Taylor: Do you need more power?

Mr. Thompson: Information is what we need.

Mr. Renwick: Maybe this is oversimplistic, but there might be some merit in going to the company you are regulating and saying, "I want to know all the outreaches of your organization, whether it is up, down, sideways, around or anywhere else." This has the benefit that you then know.

Second, somebody is on the line to provide you with full disclosure. Third, you are not seen to be conducting some kind of police investigation about what they are doing; yet you have the information. From your examination and activities, you can say, "I want to know a little more about your interest in this company because we are concerned about the kind of business you are doing."

Mr. Breithaupt: You have a problem if you look at the holding company scene. I presume the attitude is that anyone who has a percentage interest in a trust company must be prepared to disclose the entire empire of investments or interests. I would hope, though, that that disclosure would be based on what influence that might have on the operations of a trust company.

3:30 p.m.

If, for example, one of the other arms of the holding company enters into certain financial arrangements with that trust company which may be questionable, then that is the sort of information that should come forward. However, are you at this point looking to say to Mr. Jackman, for example, who is involved in several trust company circumstances, that all the detailed operations of the life insurance company, or whatever other arrangements there must be, would have to be fully disclosed because there is a commonality of interest and connection, at least at the top of the pyramid?

Is this the intention, or is it going to deal with the fact that company X is dealing with this trust company and, because there is a commonality of ownership, disclosure is peculiarly wanted in that situation?

Mr. Crosbie: I think it is the latter.

If you are talking about arm's-length transactions and if everybody is working under the umbrella of a common holding company, obviously you do not have arm's-length transactions, although looking at it without knowledge of a holding company it would appear on the surface you have.

I think this is what you were saying in your second situation. We need to know for purposes of determining the legitimacy of transactions whether there is a common owner or not.

Mr. Breithaupt: But disclosure is for that purpose. Presumably the interest the owner or a person with substantial control over the trust company may have in a dozen other things, none of which impinges directly on the trust company, should be of no concern.

Mr. Crosbie: I think this is an area where all you can do from a practical point of view is require disclosure. If a trust company is going business with a subsidiary of a common parent, then it should be disclosed somewhere.

Mr. Breithaupt: You have to rely on a materiality attitude and the ability to penalize if that is not appropriately disclosed.

Mr. Crosbie: Yes.

Mr. Renwick: That is a separate and distinct area of problem. I think it is separate from the question of the traditional corporate interconnections. It seems to me that going up the ladder, all you want to know is who controls this company. It may be one or two levels up or it may be a branch, but once you have found that, I think that is all you need to know up there.

Going down the other way, you simply want to know what the shareholdings are.

Mr. Thompson: Yes. You want to know the value of that subsidiary because it is going to appear as an asset of the trust company.

Mr. Renwick: You want to know what percentage they hold and all of that.

Then the second question you raise of who is doing business with whom in the empire, even though there is no relevant share connection, seems to me to perhaps fall in a different area. I think the share connection part of it lends itself to disclosure. The other part of it may have to be a matter of direct inquiry.

Mr. MacQuarrie: The statement on page C-7 is quite clear and I do not think it is an unreasonable power to give the registrar, although I have some reservations about too much discretion being given to any civil servant in terms of application or anything. I think it should be strictly based on the statute.

Mr. Chairman: With that, we will move on to item 8 on page C-10. It basically states, "The maximum investment--

Mr. MacQuarrie: With all due respect to those present.

Mr. Chairman: By all means.

"The maximum investment by a loan or trust corporation in another corporation, other than a subsidiary, should be reduced from 20 per cent to 10 per cent, making it less likely that a number of corporations, acting secretly and in concert, can avoid the provisions of the act."

Mr. Breithaupt: I think, Mr. Chairman, this is going to be a major and somewhat time-consuming theme. Perhaps it would be good to approach this freshly tomorrow morning.

Mr. Chairman: That might be a good idea. We did have a lot of discussion on it, as I recall.

We can move on to page C-12, item 9: "The registrar should have the power to designate corporations in which a loan or trust corporation has invested as an affiliate with special rules applicable to all transactions with such affiliates."

Mr. Renwick: I think that is consistent with what we have been discussing.

Mr. Chairman: On page C-13, item 10: "The power of the registrar to regulate and control transactions between a loan and trust corporation and its holding company should be increased and more closely controlled."

Mr. Breithaupt: I realize it is important to have that information, but when you use the phrase, "more closely controlled," it seems to me to be a decision more to interfere than to learn. I am wondering if you could expand on this for us as to why you feel competent to control that sort of relationship, or how you would do it?

Mr. Thompson: There may well be a holding company that has an overall pension plan for its whole group of companies or something. We are looking at that and I do not see there is any reason, because it gives a bulk buying power, to interfere in that type of thing. If there are transactions between the companies that may not be for fair market value or cash, these are the types of situations of which you want to be knowledgeable and be able to control.

Mr. J. A. Taylor: What kind of legislation do you envisage? How would a section or sections be drafted to accomplish what you set out here?

You are saying the power of the registrar should be increased and more closely controlled, as I read that--unless it is the grammar that is troubling me.

Mr. Thompson: I think the key to it is "transactions."

Mr. J. A. Taylor: It says, "The power of the registrar to regulate and control transactions between a loan and trust corporation and its holding company should be increased and more closely controlled." Am I reading it improperly?

Mr. Boudria: I do not think that is what it says.

Mr. Van Horne: The phrases are almost mutually exclusive in their meaning.

Mr. J. A. Taylor: It seems to me perhaps that is not worded with the most clarity.

Mr. Breithaupt: It would appear that the writers of the report, whoever they are--

Mr. Crosbie: Yes, "and such transactions more closely controlled."

Mr. Breithaupt: --may be referring to increasing the powers to regulate. The result of the increasing of those powers may be to more closely monitor a variety of transactions.

I still do not think the word "control" is the proper word, unless it is going to be the function of the registrar to second-guess every decision of a chief executive officer in the business. I realize the powers may have to be more clearly defined and there may well be a requirement to monitor these internal transactions more clearly, but to base any legislation on this phrasing I find unfortunate.

Mr. Crosbie: Could I ask a question? If I follow what you are saying, you are saying we should monitor them more closely. Now, let us assume we are monitoring them--

Mr. Breithaupt: You may choose to do that.

3:40 p.m.

Mr. Crosbie: Let us say we have chosen to do that. We are monitoring it more closely and we find an undesirable practice: say the parent company is selling overvalued assets to the trust company as a process of transferring funds to the holding company. What do we do? Having monitored it, what is the next step?

Mr. Breithaupt: If you find the assets have been overvalued, presumably if they are going to be used as anything to impinge upon the borrowing base or to deal with the multiple at all, you would devalue those assets so far as they impact upon the borrowing base. On the other hand--

Mr. Crosbie: But you are saying you would not prohibit the practice. You would just respond to it by properly valuing them as assets in the hands of the trust company?

Mr. Breithaupt: I think the trust company knows the valuation of assets upon which any borrowing multiple is based is subject to independent evaluation and the penalty of interference. That should be a sufficient guideline to deal with the operations of the company.

If, for example, as a result of that kind of inappropriate valuation--I will not say improper, but let us say inappropriate--you require additional capital from the beneficial owners of the majority of shares or the single person or two or three persons in a smaller company who have by far the majority of the investment, then you can call upon that, through an additional capital infusion through a subordinated shareholder note and the advancement of capital until the company digests whatever its concern is.

Again, when you look at the penchant for second-guessing, I wonder how practical it is to talk about these powers on the theme

that, by exercising them, you are effectively going to control the operations of any day-to-day management of a trust company. It seems to me you have an obligation to have a certain framework, a certain series of guidelines, the opportunity to warn and the opportunity then to act independently with appropriate powers, to revalue, to require additional capital or whatever it may be.

When you talk about controlling in this sense, perhaps I am the only one who equates that controlling theme with an interference theme I do not much like. I think the framework should be equally there for everyone, and the game plan and the requirements should be quite clearly known. If there is an inappropriate valuation of an asset, you can quite clearly give your point of view to the manager or the owners of a trust company and have it resolved promptly.

Mr. Crosbie: I think there is a problem with the semantics here. You are saying the control mechanism should not be a power to prohibit but should be a power to, if you will-- "punish" is too strong--adversely affect the subsidiary trust company by reducing its capital or affecting its borrowing ratio or whatever--

Mr. Breithaupt: Maybe I just do not like the word "control."

Mr. Crosbie: --and you control it that way. Indirect control as opposed to direct control is what I hear you saying to me. You do not object to the practice being controlled, as long as you use the mechanisms of regulating the capital and borrowing and that sort of thing.

Mr. Breithaupt: I would like to see you have the powers you require and have your opportunity to use them clearly known within the industry so no questions are asked when you walk in and say, "I think that mortgage is overvalued and the property is, in fact, worth half of what you advanced funds upon."

However, to phrase it in terms of control seems to me to be an unnecessary, bureaucratic attitude in the management of the corporations. I prefer the carrot to the stick approach. As I say, it may be that I just do not like this control theme. I approach it from a different attitude.

Mr. Crosbie: We may be overreacting to our experience of the speed with which improper activities can take place. If we have to wait three months to find out what the impact of improper activity is on the capital of a trust company, we may find it is significant and we are too late to do anything about it.

Mr. J. A. Taylor: Or the impact of government decision in lieu of the other decision.

Mr. Crosbie: Yes.

Mr. J. A. Taylor: On a point of clarification, Mr. Chairman--I know the member for Riverdale (Mr. Renwick) is anxious to make a contribution here--but as I read this section, you are

only talking about transactions between a loan and trust company and its holding company. Is that right?

Mr. Crosbie: Yes.

Mr. J. A. Taylor: So that is just a narrow area, which may eliminate a lot of the concerns of the member for Kitchener (Mr. Breithaupt).

Mr. Thompson: If there are no transactions between them that basically would be a transfer of assets for value, then there will be no reason to--

Mr. J. A. Taylor: No, but you are warning them of your ability to interfere in those particular situations.

Mr. Thompson: Yes.

Mr. J. A. Taylor: So it is narrow in that sense, as I read the spirit of that at least, but I am not happy with the wording.

I come back to number 7 on page C-9 suggesting additional powers for the registrar to deal with subsidiaries as opposed to holding companies.

Mr. Crosbie: What we are saying in these two matters is that the Legislature has seen fit to set up a system for controlling trust companies. We do not want that system of regulation and control substantially impaired because, instead of the trust company doing it, it is being done below by a subsidiary or because somebody in a holding company is carrying out an action that is detrimental to the trust company.

We are looking at our obligations to take action to protect the depositors. It does not matter to us where the adverse practice takes place, whether it is in the trust company, the holding company or the subsidiary. If it has the same impact on the depositors, if we are going to exercise our responsibilities, we have to be able to deal with that activity wherever it takes place.

Mr. J. A. Taylor: Would you call that arm's-length or non-arm's-length?

Mr. Crosbie: Non-arm's-length.

Mr. J. A. Taylor: I would too. I wonder if, in dealing with that type of transaction, you might sharpen your focus a little bit. It troubles me the way it is worded.

Mr. Crosbie: There is no question that in this process, there is a wide range of quite legitimate non-arm's-length transactions that will be carried on without any problem on a regular basis.

Mr. Breithaupt: For value.

Mr. Crosbie: For value, yes, in the normal course of business.

Mr. J. A. Taylor: But there is probably more danger inherent in non-arm's-length transactions. In other words, there is more room for abuse in those transactions. I can understand the need for more supervision or more authority in those situations. However, it is not clear to me what you are doing here unless you sharpen the focus of the semantics a little.

Mr. Crosbie: I agree. When we start translating this into legislation, I am sure some of the vagueness that occurs from place to place in the white paper is going to have to be removed. We cannot use the same language in the legislation.

3:50 p.m.

Mr. J. A. Taylor: You do not want to be oppressive. You do not want to substitute in an arbitrary way your judgement for the judgement of a prudent and honest businessman. At the same time, presumably you want to be able to step in where there appears to be some abuse taking place or where public funds are being put to extraordinary risk. I am not sure how you achieve that, and that is why I indicated earlier I would like to see the way you manifest that in terms of legislation.

Mr. Crosbie: I say this most sincerely, I appreciate the attention the committee is giving to this problem because it is one that is very troublesome. I think Mr. Renwick quite properly has emphasized the onus that is going to be placed on the civil service, the regulators, once you get this legislation passed. We do not want to find ourselves in the position where we have been given on the one hand strict responsibility and accountability and on the other hand an inadequate process to deliver; but we do not want to overkill on the other hand.

Mr. J. A. Taylor: But when a civil servant is given discretion, then it becomes a matter of judgement on the part of the civil servant how he exercises that discretion; so it opens up a greater area for criticism. You are damned if you do and you are damned if you do not; and I am talking about the potential for criticism of civil servants in these situations.

That is why I think it is safer, where it is possible, to legislate in a more defined sense, so the scope of that discretion is as narrow as possible and the civil servant has a mandate to do something and does not expose himself to criticism, rightly or wrongly, either because he weasels out of something you think he obviously should do or because he does something you feel may be unnecessarily oppressive or harsh.

Mr. Crosbie: I must say I have a concern in some of our recommendations where we are beginning to exercise, if you will, second-guess business judgements. It puts the regulator in a very difficult position. If there is a way of avoiding that, I will be the first one to recommend it or second the motion. It is a difficult task to define just how we exercise these controls or what limits you put on the exercise of the regulatory control.

Mr. Renwick: My only comment is that I think this is an area where the question of disclosure is very important. In the first instance, the obligation should be on the loan and trust corporation, and on its holding company, to make certain they disclose the transactions.

That does two things. One, it indicates whether there is a degree of approbation or disapprobation needed of the particular transaction; but on the other side of it, it gets away, at least in the initial instance, from the concept of regulating and controlling those transactions. You may want to control them, but I think you have to know what they are in the first place. I think they should be required to give you prompt and timely notice of any transaction between the loan and trust corporation and its holding company.

Mr. Chairman: Anything further on item 10? If not, we can move to item 11: "New restrictions should be introduced affecting the issuance of shares of the loan or trust corporation for other than cash and the consideration that may be received for such shares."

Mr. Breithaupt: Perhaps we could be told of the background and reason for this desire to have restrictions in this area.

Mr. Crosbie: It is basically again the question of assurance that the transactions are for value. When you get into certain types of consideration, if there is no fairly strict basis for controlling, you can get all sorts of fictional value and substantial moneys being transferred for low-value assets. This certainly was a characteristic of many of the transactions in the recent trust company matter.

It is interesting to note that the 1975 select committee went almost as far as we did. They were allowing the transfer of assets that were authorized investments. We stopped a bit short of that.

Mr. Breithaupt: What sort of restrictions do you presume are going to be helpful?

Mr. J. A. Taylor: What are the new restrictions that you contemplate?

Mr. Crosbie: The new restriction is for other than cash and consideration that may be received for such shares. We have limited it to cash.

Mr. Breithaupt: For example, if the value of the property is transferred in total to the company in return for an issue of treasury shares or another preference kind of share with certain conditions, you want to the opportunity to observe upon the value of that transfer, whether the property was worth that amount, whether the terms and conditions on the preference shares issued, which then affect the borrowing multiple, are valid and appropriate, that sort of thing. Is that what you have in mind?

Mr. Thompson: Yes. You can also add the liquidity effect to it--the value you may take into long-term capital gain on something. That would mean in effect that the asset perhaps being transferred in was really not one that could readily be put on the marketplace without taking a loss. There are all sorts of considerations that really require almost an individual assessment of what that particular asset is, its nature and character, but basically going back to the value.

Mr. Breithaupt: So the restrictions you have in mind would deal with the opportunity at least to review and, if necessary, to revalue in accordance with your criteria, subject to submissions or some kind of appeal mechanism from the parties involved who would wish to justify that value to the best of their ability.

Mr. Crosbie: Yes. The white paper itself is very clear. It says: "Further, no shares, common or preferred, should be issued other than for cash"--that is the general rule, cash only--"except under extraordinary circumstances. In extraordinary circumstances, shares may be issued where the consideration is for independently appraised physical assets at fair market value, provided the registrar's approval has been obtained."

As Mr. Thompson has just indicated, you could think of assets that might have a fair market value but would be so difficult to sell as assets for a trust company or a loan corporation that they would be totally inappropriate--they do not help the liquidity situation or anything else--and the registrar might be quite justified in refusing to accept that type of payment for the shares of the corporation.

Mr. J. A. Taylor: You would require the registrar's approval for anything but cash. Is that what you are saying?

Mr. Crosbie: Yes.

Mr. J. A. Taylor: Is that the situation now?

Mr. Thompson: No. That is what we are asking for.

Mr. J. A. Taylor: What restriction is there now on anything but cash?

Mr. Thompson: There is no restriction on the government side. It is really on the basis of how that would be valued from an accounting basis.

4 p.m.

Mr. J. A. Taylor: But what I am getting at is, once you insert yourself as a condition of transfer, shares for assets, you are then in a position to require all kinds of things, whether they are appraisal reports or what have you, which presumably gives you whatever control you need because that is the judgement call you make as a condition of your approval.

If it is that simple or that complicated, if that is what

you are saying, that now we are going to provide for registrar's approval, I would like to know that.

Mr. Crosbie: In essence, that is what we are saying. We do the same thing as that general power of the registrar to go out and look at a mortgage and demand to have it revalued. If the valuation comes in at less, he appropriately reduces the company's capital.

What we are saying here is that when shares, which represent the capital of the company, are being sold for other than cash, then we need the same ability to go out and test the genuineness of value being placed on the assets that are received in return for shares.

Mr. Breithaupt: This could be paintings, other objets d'art or a stamp collection. I suppose it could be anything.

Mr. Chairman: A car.

Mr. Breithaupt: A car, whatever.

Mr. J. A. Taylor: All good trust company investments.

Mr. Renwick: This is not a new problem. I think our problem in the select committee was that there was no provision in the statute with respect to this question. It would be wonderful if the world permitted you simply to say you could only issue shares for cash, but I guess the first thing you learn in corporate law is how to camouflage that transaction. Because you can make it a cash transaction, those concerned about corporation law have done the best they can, as it is done in the Business Corporations Act, to place the responsibility fairly and squarely on the board of directors to determine the value of that property for which they are going to issue the shares.

I get concerned when we are thinking of asking the registrar to approve or disapprove of that, because I think that is a very onerous obligation on the registrar. If we ever get this responsibility of the directors into the statute and correctly phrased, then you put the onus on them, so they are to determine the value of that property for the purposes for which they are going to issue the shares. I think that value has to be the same as any other value, what the property would fetch in the marketplace.

I was just looking at the select committee report, and it does not appear to me that there is any suggestion in here that the registrar should be involved in that question.

Mr. Crosbie: No, it does not.

Mr. Renwick: All we wanted to do was to bring the act up to date so it was very clear that they could not play fast and loose with property. The other thing I noticed we kicked out was services. They cannot issue shares for past consideration of services. Why are we not taking that approach in this matter?

Mr. Crosbie: The argument I would suggest in reply to your question is, why make a distinction between this type of capital transaction and one where the company is investing depositors' money in mortgages? There, as I understand the current thinking, we are expected to make at least some sort of random check to determine whether the mortgage portfolio is a valid, properly valued one.

Notwithstanding that, surely it is a function of the directors to ensure all the investments are properly placed.

Mr. J. A. Taylor: But you do not need the registrar's approval as a condition precedent to a mortgage loan. What I was getting at was what the new restrictions meant and what you have told me is that the new restriction is tantamount to the registrar's approval, that there was prior approval. If that is so, then that certainly is different from spot checking or setting out some criteria and so on. What Mr. Renwick is saying, as I understand him, is that the obligation, the liability and the responsibility should be on the part of the board of directors. It is the concept of self-policing, presumably. You have a responsibility and if you do not discharge that responsibility, your head is on the block.

Mr. Crosbie: Maybe again we go back to Mr. Renwick's avenue that wherever there is any change in the nature of the shares, or where the shares have been issued for property as opposed to cash, it shall be reported to the registrar and the registrar would then have the option of going out and having a look at what was obtained, valuing it and, if he found that it was not the proper value, taking the appropriate action at that time.

Mr. Renwick: I do not mind it being even broader. The key for the registrar is his control over the paid-up capital for the purposes of the borrowing power.

Mr. Crosbie: Yes.

Mr. Renwick: If there have been shares issued which are for property that is not of the quality which is required, or if the valuation is improper or inadequate, then the registrar--and it may not be limited only to this situation--should have the power to affect the borrowing capacity of that company.

It is a horrendous job to impose on a government official to value property. That is my view of it in any event. If directors were going to do that, I would simply put it on them, and they would run the overriding control that the registrar could walk in and say, "I am going to reduce your borrowing multiple."

Mr. Breithaupt: I would like to see the industry know that the registrar has those powers with the hope that they would never have to be used.

Mr. Renwick: Any sensible trust company would come to the registrar and say: "This is what we are proposing to do. We have this valuation. It is going to go before the board next week."

We do not want to run afoul of our capacity to borrow on it." That is the way they would do it. If they were crazy enough to do it some other way, then you should be able to pull the string on their borrowing power and shrink it to give effect to what you feel was an overvaluation or an improper category of investment that they are in. As I say, that ultimate regulatory power is the real one.

The problem with upsetting any transaction is that you always get involved with the other question, do we do more harm than good by upsetting it? Once something is a fait accompli, it would not be the first time you had to say, "We do not want them to do it again, but we cannot reverse the position; all we can do is straighten it out." At least I assume you run into that on many occasions.

Mr. Thompson: The most difficult part in dealing with that is, going back first to incorporation, you incorporate by putting up cash. We are trying to maintain that principle, but leaving some flexibility there. But there might well be circumstances that would permit the transfer of assets into the company in consideration of the issuing of additional capital. Sometimes that is the only asset apart from cash that the individual owner may have. We want to leave it to that extent.

On the other hand, the difficulty you have if you do not have some approval process on it is that if this happens during the course of a year, it would turn up on the annual return, and you could have many months involved in this. It is not that it is hidden or anything; it is just that we would have to hone our reporting system even finer to try to keep up to date with what was actually happening in each and every one of these companies. It makes it very difficult to deal with a transaction that may be months later.

4:10 p.m.

Mr. J. A. Taylor: I gather the select committee's recommendation is too restrictive from your point of view.

Mr. Thompson: To the extent that in our own assessment it did not deal with the question of the effect of the transaction on the liquidity of the company. It may well be an authorized investment.

Mr. J. A. Taylor: I see. I was wondering whether you wanted to go beyond the committee's recommendation and, if so, whether in those situations you required prior approval of the registrar so the trust company could do what is recommended in terms of the select committee's recommendation and beyond that when you exercise control. You are saying there might be problems inherent in any transaction apart from cash.

Mr. Thompson: Yes, there might be. It might well affect things.

Mr. J. A. Taylor: You want prior approval for any transaction other than cash. That is the part that troubles me.

Mr. Thompson: I must say it troubles me, because once you get into this approval basis, you become part of the transaction.

Mr. J. A. Taylor: That is right.

Mr. Thompson: And listening to the member for Riverdale (Mr. Renwick), I really do feel that is the responsibility of the directors.

Mr. J. A. Taylor: That is right. Then you may not be exercising good business judgement because you are more interesting in protecting yourselves than the depositors.

Mr. Thompson: That might be possible, but I hope not.

Mr. J. A. Taylor: I do not say that in any disparaging way, but what have you got to lose? If there is an undue burden on you, normally in my experience, the government's position is a fail-safe position, so again it may be overkill.

Mr. Crosbie: It might be possible to come up with some concept from the 1975 committee report. In other words, if you are not going to approve the transaction in advance, you can minimize the hazard by limiting the type of investment that can be made. That is what the 1975 report does.

If the registrar still has concerns about the nature of that type of investment, it might be possible to indicate in the language of the act, the guidelines or the regulations the type of investment, characterizing it as being readily convertible to cash or some such language to indicate the types of investments that will be acceptable and the types that will be turned down on subsequent review. That might get round the problem.

Mr. Breithaupt: If they had to seek a ruling in advance, it would resolve that problem. Surely it would be rare that anything other than real property was being used in this category.

Mr. J. A. Taylor: No, but the suggestion is the requirement of a ruling.

Mr. Crosbie: You keep thinking about the good guy. How about the devious one who will sell you the Brooklyn bridge for your shares?

Mr. Breithaupt: I already bought that.

Mr. Chairman: You cannot do it twice.

Mr. Boudria: When you talk about new restrictions or contemplate that there be restrictions on the type of shares, I am thinking about the newer features we see in shares. I wonder whether they are equity instruments or debt instruments when you

talk about retractable shares that do everything except whistle Dixie. I wonder whether they are shares per se or whether they just happen to have the name of shares. Is that an area you intend to address?

Mr. Crosbie: This recommendation does not deal with that issue at all. This just deals with what you get for the shares when you do sell them, whatever they are.

Mr. Boudria: But I am talking about whether new restrictions should be introduced affecting the issuance of shares.

Mr. Crosbie: For other than cash.

Mr. Boudria: Yes.

Mr. Crosbie: The issuance of shares for other than cash does not really concern the nature of the share itself, but the consideration you receive for it once it is issued. That is the topic being addressed in this recommendation.

Mr. Boudria: Is there another recommendation addressing the other issue? Is that addressed anywhere else?

Mr. Thompson: In the determination of the borrowing base, yes.

Mr. Renwick: In the case of a trust company imposing an obligation on the board to approve the purchase of any property, whether or not it is for shares, I do not see any problem. I forget what the language is. There is something to do with expressed determination and knowing all circumstances of the case and that the property is worth such and such.

Then you avoid the question of whether they are issuing it for shares or not issuing it for shares. You simply say: "Look, if you jokers are going out to buy property as distinct from the legitimate authorized investments, and whether it is real estate, a Picasso painting, a stamp collection or whatever the hell it is, you have to, by expressed resolution, determine that is the value of it." You can probably carve out the kind of exception that did not mean they had the value of the postage stamps they buy, the day-to-day office machine and equipment. You could probably rule that part of it in an accounting way.

Mr. J. A. Taylor: You would not be trading those for shares anyway.

Mr. Renwick: Not likely. But I was thinking whatever they are going to buy, whatever they are going to use that money for, no matter how you cooper this damned thing up, it would not be long before some board of directors did the old thing. They said they issued the shares on a daily loan, somehow or other issued the shares, got cash for them and then bought the property the next day with the cash. It was a cash transaction. They issued the shares for cash and they bought the property for cash. You could never trace the dollars.

Maybe you have to go the other step. Every time you buy a piece of property, it has to have an expressed resolution of the board in all circumstances, that the value for the piece of property is a fair market value and whatever other language you feel is necessary.

Mr. Crosbie: I think we can rework this to co-operate with the recommendations we have heard.

Mr. Chairman: Well, can we move on to one more before we come to a close?

Mr. Renwick: Yes, we can go all night now.

Mr. Chairman: Will you so move? Number 12 on page C-15 says, "The registrar should have authority to require specific transactions to be submitted to the board of directors of a loan or trust corporation or to require the loan or trust corporation to make the transaction public."

Any comments by the committee?

Mr. Mitchell: I think that is really making the board of directors accept some responsibilities. Not being in one of those august positions, it does, none the less, strike me as a reasonable thing to expect.

Mr. Chairman: Has the deputy minister any comments?

Mr. Crosbie: No, other than to suggest it might be combined with our thoughts on the previous one and work something together on the same, because this really is a principle we were talking about to apply to the other issue of valuation shares.

Mr. Renwick: It may be corollary to that. It is just an unbelievably onerous responsibility.

Mr. Chairman: Number 13 on page C-16: "All loan and trust corporations carrying on business in Ontario would register initially and renew their registration annually. No registration should be granted or renewed unless the corporation is a member in good standing of the Canada Deposit Insurance Corp."

4:20 p.m.

Mr. Renwick: I think we covered a good part of that in the other discussion about the preconditions for incorporation, and they would carry through. I think everybody has agreed with that first part. I do not know at what point we are going to deal with this question of the Canada Deposit Insurance Corp., but it certainly changed the nature of the world up to that--what is the limit now?

Mr. Chairman: It is \$60,000.

Mr. Thompson: Recommendation 14: "Borrowing and investment powers to be controlled by the registrar at the time of registration--"

Mr. Renwick: Before we leave the CDIC thing, what is the net effect going to be? Is it too early to tell the cost of the intervention by CDIC, what their overall loss is going to be in relation to the level of premiums and--

Mr. Crosbie: I think it is.

Mr. Renwick: They are going to lose ultimately.

Mr. Crosbie: Yes. I think ultimately there will be money lost.

Mr. Renwick: What is the range of premiums a trust company pays now? How does it work?

Mr. Thompson: It is a percentage of assets. I would have to look it up.

Mr. Renwick: It must be a fairly complicated formula.

Mr. Thompson: Yes, it is, and it varies with the number of assets. That is why the banks can say they pay 80 per cent of the cost because they have big assets. Basically, the CDIC is holding, as contributions from its member institutions, about \$350 million in total.

Mr. Renwick: Is it done on a strict insurance principle?

Mr. Thompson: No. It is balanced in the sense--they are in the money management business to some degree. As long as you are holding a sum of money of that size, you are in the money management business and on the straight insurance principle--to the credit of the corporation, it would not of necessity be that much.

Mr. Renwick: I suppose it is too late to go back down the road and eliminate the Canada Deposit Insurance Corp. and let the corporations stand on their own or even, as the chairman of the Toronto Dominion Bank suggested, put it on some kind of co-insurance basis.

Mr. Crosbie: I do not know if that last point is beyond reach. One of the arguments for deposit insurance, and one of the main arguments for it in the United States, is not so much that it ensures and provides for the payment of depositors, but rather when there is a failure, the existence of it keeps the market calm. It is there if you need it, but because people know that, they do not panic when there is a failure.

In the United States they are much more accustomed to financial institutions failing and the federal deposit insurance corporation coming in, paying all the depositors and taking over management overnight, and at the end of the weekend there is a new owner and business as usual.

Mr. Boudria: It must be hard to get used to.

Mr. Renwick: It is a catch-22 situation. The reason the Crown Trust thing did not reverberate on the Danforth was simply because people said, "Oh, well, the government will pick it up," just the way I walked around saying, "They will never allow a bank to collapse." It did not matter whether it was the CDIC or anything else. They were never going to allow a depositor to get hurt in Canada.

I went along the same way with the trust companies, thinking you are not going to get hurt if you are a depositor in a trust company. All this has done is provide that additional guarantee, the bit of cement to that generally accepted view. It certainly precludes the run on the trust companies because people do not run, nor do they start a run. Somehow or other it has done more than that.

I keep asking myself--and this is no reflection on the people at the table or anywhere else in the Ontario government service--if it had still been the Ontario Share and Deposit Insurance Corp. that was guaranteeing the deposits of people in Ontario in trust companies, how the government would have had to deal with that kind of question. Here it was always, "You have to deal with the federal government because it is a federal government responsibility."

Mr. Crosbie: We have wondered about that ourselves because one of the major problems, and you alluded to it earlier today, is that the divided jurisdiction between the federal government and the provincial government really requires some very close co-operation when the provincial government is moving in to take possession and control of assets but the federal government is going to put up the money to bail out the depositors.

In the United States it is one and the same institution that is doing it, so you do not have the lengthy and complex negotiations we did to set up the transaction.

Mr. Renwick: If you had run into very much difficulty from the federal government, you would have had to go it alone in Ontario and hope that in the next couple of months you could work it out with the federal people to pick it up.

Mr. J. A. Taylor: What do you find objectionable about the deposit insurance?

Mr. Renwick: I find it kind of strange that I need all that backup. I walk into a trust company, I put my money into a deposit and I am told it is in trust, that there are assets that are segregated to protect that money in there. I am supposed to believe that it is a really responsible organization and then, in addition to that, the federal government basically is guaranteeing it. The financial institutions are not doing it.

Mr. J. A. Taylor: But they are making a contribution, are they not?

Mr. Renwick: Yes, but I think it is quite small in relation to the total, is it not? The actual financial institution's contribution is very limited. That was federal government money basically, was it not?

Mr. Crosbie: No, not really. It would be the deposit insurance corporation. I am not sure of the funding.

Mr. Renwick: Was it all premium?

Mr. Crosbie: They have a fund that has been built up.

Mr. Renwick: Yes, I understand that, but they also get money from the federal government automatically, do they not?

Mr. Thompson: I think they can borrow, but it is still the obligation of the corporation.

Mr. J. A. Taylor: I was under the impression that this was actuarially sound in terms of a fund that would accommodate the payouts. I do not know, but if that is so, presumably it would reflect on the operating costs of the banks and the trust companies.

Mr. Renwick: If that is the way it is, if it is actuarially sound and so on, then that is fine, the financial institutions are providing for it. But when I read the Canada Deposit Insurance Corporation Act at one point, it sounded to me that it came from--

Mr. J. A. Taylor: They may be bankrolling it initially. I do not know; I would be interested to know that. I would think that is the way it should function so that they are really policing, presumably, and standing behind their own institutions.

Mr. Chairman: Gentlemen, I think this would be a good time to have a break in the proceedings and adjourn until 10 o'clock tomorrow morning.

The committee adjourned at 4:29 p.m.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO

WEDNESDAY, FEBRUARY 29, 1984

Morning sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Boudria, D. (Prescott-Russell L)
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Eves, E. L. (Parry Sound PC)
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Grande, T. (Oakwood NDP)
Kerrio, V. G. (Niagara Falls L)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitutions:

Van Horne, R. G. (London North L) for Mr. Kerrio
Williams, J. R. (Oriole PC) for Mr. Stevenson

Clerk: Arnott, D.

Staff: Mooney, P., Researcher, Legislative Library
Nigro, A., Researcher, Legislative Library

From the Ministry of Consumer and Commercial Relations:

Crosbie, D. A., Deputy Minister
Thompson, M. A., Superintendent of Insurance and Registrar of
Loan and Trust Corporations, Financial Institutions Division

Witnesses:

From the Investment Funds Institute of Canada:
Brewerton, R., Executive Vice-President, Sterling Trust Corp.
Douglas, K. A., President
Pittet, D., Legal Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, February 29, 1984

The committee met at 10:05 a.m. in committee room 1.

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO
(continued)

Mr. Chairman: I see a quorum. This morning we have the last in a series of witnesses, the Investment Funds Institute of Canada, Mr. Keith Douglas, president; Robert Brewerton, executive vice-president, Sterling Trust Corp., and Douglas Pittet, legal counsel.

Mr. Douglas, would you introduce yourself and your colleagues to the committee and proceed with your brief?

INVESTMENT FUNDS INSTITUTE OF CANADA

Mr. Douglas: Thank you, Mr. Chairman. On my left is Robert Brewerton of Sterling Trust Corp. and on my right is Doug Pittet, who works at our office and is legal counsel.

We sent the committee a letter outlining our concerns about one paragraph in the white paper proposals under the heading "Subsidiaries." It suggested that in the future, trust companies not be permitted to participate in the ownership of mutual funds or their related sales and management companies.

Our biggest problem in the whole thing is wondering why a proposal like this might be initiated. We searched our minds to determine what situations may have given rise to a proposal to exclude trust companies from participating in this kind of activity. We are fully supportive of their existing role and we would not like to see it, from a consumer's point of view, mitigated in any way. We think it is for the consumer's benefit to have a greater variety of product and choice of institution to deal with. Therefore we would be fully supportive of their maintaining that power.

We came here today to offer to answer any questions you might have. I trust our letter was sufficiently clear about how we feel about that particular proposal. Mr. Brewerton, myself and Mr. Pittet would be happy to answer any questions any member of the committee may have about our comments in connection with that proposal.

Mr. J. A. Taylor: Is that exhibit 40?

Mr. Chairman: Yes, I am sorry. I should have mentioned it is exhibit 40. Thank you, Mr. Douglas. Are there any questions by members of the committee?

Mr. Breithaupt: We had the comment from the--

Mr. Renwick: I think the ball is in the minister's court.

Mr. Breithaupt: We were told, as I recall, that the reason this was in there was because no one had ever bothered to use the power before.

Mr. Chairman: That is what I understood.

Mr. Breithaupt: Perhaps we could refer to it in that regard.

Mr. Crosbie: I think, as the registrar has explained before, the argument was that the power had not been used, coupled with the fact that we felt the ancillary powers to carry out that sort of activity were adequate. We saw this as a housecleaning measure to remove a section of the act which had not been specifically used. It in no way impairs the ability of trust companies to use the ancillary power provision.

So it is not a prohibition against the development of mutual programs. It just removes one specific section of the act and leaves it with the ancillary powers.

Mr. J. A. Taylor: I gather the view from the ministry is that this is redundant?

Mr. Chairman: It is section 183, I believe.

Mr. Renwick: Clauses (c) and (d), is that right? "Any company incorporated to offer public participation in an investment portfolio," and, "Any company incorporated to provide a company mentioned in clause (c) with advisory, management or sales distribution services."

Mr. Crosbie: I believe there is a specific power too in respect of the mutual funds.

Mr. Renwick: That might be it, I would think.

Mr. J. A. Taylor: The way the wording is in the white paper, it looks as though the intention is to strip this power away, where it reads--it is a separate paragraph--"It is proposed that the power to incorporate or acquire mutual funds and mutual fund sales and management corporations be eliminated for the future." That is a pretty wide, sweeping statement. It does not indicate it is covered elsewhere.

Mr. Breithaupt: It certainly could lead anyone reading it to be somewhat upset if he happened to be involved in that. It would have been much more helpful to have said the reason for this is that the power is not being specifically used and is otherwise accommodated in the act, which would have saved not only the delegation's involvement but no doubt a few worrisome moments for its members, if such is the case.

Mr. Renwick: It would certainly cause your legal counsel

to scratch his head, I would think, if we were just to take that simple road and delete those provisions to bring it under the auxiliary powers section.

Mr. Breithaupt: At least without any explanation that is mutually acceptable to all the parties involved.

Mr. Douglas: Mr. Chairman, if I could make another point now that we have that clarified by the ministry. We have several trust company members, as we illustrate in our member directory, but the reason Mr. Brewerton is here is that his situation was the only one of which I was aware where a trust company actually acquired an investment management corporation and some related mutual funds.

Because the company is federally incorporated, it did not fall under this particular legislation, but it seems to us to be not undesirable that the power continue in the event that a trust company may wish to acquire additional mutual funds to merge into the ones it has. I do not know about sales and management companies in particular--especially the sales companies--but I do not see any reason why one might want to preclude a trust company from making a decision to acquire an existing mutual fund organization in the event it wanted to do so.

Mr. J. A. Taylor: Are we introducing a constitutional problem? If you are federally incorporated and have that power, then how do we strip that away?

Mr. Chairman: Do you have any comments, Mr. Brewerton?

Mr. Brewerton: In our case we did buy a mutual fund corporation which was already existing and which had existed for a number of years. It provided management services to the mutual funds and we used the trust company to distribute the mutual funds.

We have a parent company, which is Quebec based. We look after English Canada under our arrangements and we are at present discussing buying mutual funds and selling mutual fund corporations between ourselves in order to maintain national distribution and economies that we think could be effected.

If there were prohibition in the legislation against us doing that, well, we do not see or know of any reason of abuse--which is what we thought the ministry might have in mind and we did not know of one.

Mr. Chairman: As I recall some of the conversations, someone mentioned that they were not using that particular aspect and that is why they were thinking of dropping it. That certainly is not the case this morning.

10:20 a.m.

Mr. Crosbie: May I ask, is this the company that was set up? Would there have been an application under 4(1)(b) of the regulations on page--do you have a copy of the act? It is on page 178, 4(1)(b): "Foreign investment is made in the shares of a

mutual fund corporation or an application is made for incorporation of a mutual fund corporation, a trust company shall furnish the registrar with such information as he may require," etc.

Would the corporation you are talking about have applied under that section? My understanding was we never had any applications under these provisions.

Mr. Breithaupt: For a separate incorporation for that purpose.

Mr. Crosbie: Yes.

Mr. Brewerton: I cannot speak for anyone else, and I am an accountant, not a lawyer, so I would not know which section we applied under. But we are a federally incorporated corporation. I do not suppose we would have applied under the Ontario act for powers.

Mr. Breithaupt: You would have been registered under the Ontario act in all likelihood.

Mr. Brewerton: We registered with the Ontario Securities Commission. Maybe the attempt is to simplify things for the business community by eliminating duplicate regulation of these corporations. Maybe that is what it is under, because we filed all the documents and registered them at the Ontario Securities Commission.

Mr. Renwick: I do not pretend to understand the regulation, but the particular regulation, in its opening words, appears to apply only to a particular form of mutual funds, so far as its investment portfolio is concerned. It also applies only to a provincial trust company.

Mr. Crosbie: A provincial one, yes.

If it was a federal one, it would not have been caught by this. I think it is clear this is an area that--the recommendation in the white paper may have been drafted in language which went further than was intended--we will have to review to make sure we are not impairing legitimate operation. I noticed, looking at the reference between section 183 and the regulation, that although section 183 applies to all registered trust companies, the actual regulation only applies to provincial trust companies.

Mr. Renwick: There would be a very real question as to whether or not the regulation is effective against even a provincial trust company as being in contradiction to the express permission given in the statute. I would think the registrar would be in trouble, under the regulation, if he prohibited the investment, in view of the language in section 183. He might be able to regulate it, but I do not think he could stop it.

Mr. Douglas: Mr. Chairman, I wonder if I could ask Mr. Crosbie to tell us the particular sections of the act which may be affected by this proposal, as far as their elimination is concerned.

Mr. Crosbie: I think we were looking at section 183 but, as I say, in the light of the observations we have had on it, this is something we should review. I am just not comfortable saying we will go ahead with the white paper recommendation. This is an area I would like to have reviewed further.

Mr. Douglas: I think it would be fair to say we are not uncomfortable with housekeeping measures and so on. We just do not see any particular point in removing a power or an ability to do a particular act.

Mr. Crosbie: I am sorry Mr. Thompson is not here, because I had a brief discussion with him about this specific company. My recollection of the discussion was that it was not the intention that it be affected by what we were proposing in the white paper.

Mr. Douglas: Yes.

Mr. Crosbie: So, whatever we have to do to make sure our recommendation operates in that way, will have to be done.

Mr. Douglas: I think that is fine, as far as we are concerned. If anybody has any other questions, we would be happy to respond. Otherwise, thank you very much.

Mr. Renwick: I tend to be a little paranoid. But, of course, if we dropped clauses (c) and (d) out of section 183, we would be stuck with clause (f), which says, "with the prior approval of the minister, any company incorporated to carry on any other business activity reasonably ancillary to the business of a trust company."

It would mean that to get under an ancillary activity, every company, provincial and otherwise, would have to get the prior approval of the ministry to the investment. That is, if one could overcome the hurdle of asking, "Well, why in God's name did these fellows take clauses (c) and (d) out of the act if they did not mean to prohibit them from doing that?"

I guess we should wait for Mr. Thompson to tell us, but I certainly did not have the impression that we were dealing with housekeeping in the white paper. It would be worrisome to me if we were treating this as a housekeeping matter. If there is an actual evil that is seen or apprehended in it, that is a different matter, but if it is just housekeeping, I would be worried about it.

Mr. Crosbie: I used that language and maybe I should not have in the absence of Mr. Thompson, but my recollection of the explanation he gave the other day was that the ancillary power was sufficient. Maybe he had in mind the fact that it was with the prior approval of the minister.

Mr. Renwick: If it is agreeable to Mr. Crosbie, maybe we could just leave it on the basis that Mr. Thompson will review what has taken place this morning and give us a brief memorandum

of it and make it available to you people. If you feel you have to come back to speak on it, I am sure the committee would be agreeable.

Mr. Douglas: I was going to offer, too, to discuss the matter with either you, Mr. Crosbie, or Mr. Thompson, if it would be helpful.

Mr. Crosbie: Fine, I appreciate that. I am quite happy with Mr. Renwick's recommendation.

Mr. Chairman: With that, thank you, Mr. Douglas and gentlemen, for being with us this morning.

Mr. Douglas: Our pleasure. Thank you.

Mr. Chairman: Before we move on to the white paper, I would like to discuss with the committee the agenda for next week. It is to be hoped we will be doing the Courts of Justice Act on Monday and we will have the architects' and engineers' bills on Monday, Tuesday and possibly Wednesday. That leaves us Thursday and Friday free to return to the white paper. What would you gentlemen like to do?

Mr. Renwick: My reaction is that you are going to have a little bit of trouble dealing with those three bills in that short order. What would you think, Jim?

Mr. Breithaupt: I think if you are able to get through the three bills--

Mr. Chairman: In three days.

Mr. Breithaupt: --in those three days, you will be doing well.

Mr. Renwick: It is Monday, Tuesday and Wednesday.

Mr. Chairman: Yes.

Mr. Breithaupt: Yes. As far as sitting on Thursday is concerned, it may be that if members have made other commitments because they thought we were going to be sitting on Monday, Tuesday and Wednesday, I would not know about that. In some instances we would have different members involved, depending on the event. But that is our problem. We will arrange it among my colleagues in the Liberal Party.

I do not know just how far I expect we will be able to get today and tomorrow. I think we really have to just do the best we can this week and we will find, hopefully, that we might be about two thirds of the way through.

Mr. Chairman: My concerns are if we need Thursday, we should indicate that now. As Mr. Renwick says, we may have problems with the bills--

Mr. Renwick: I think the committee should reserve Thursday, in any event, because of the damned bills.

Mr. Chairman: Fine.

Mr. Breithaupt: I think that is a good approach.

Mr. Chairman: Okay.

Mr. Breithaupt: We will plan to sit on Thursday, if that suits the members, and--

Mr. Renwick: If it is open, we can come back to this paper--

Interjection: It is not open?.

Mr. Renwick: But certainly not Friday.

Mr. Chairman: No comments? No, certainly not Friday. Fine.

Mr. Breithaupt: Let us plan four days for next week and--

10:30 a.m.

Mr. Chairman: Four days for next week: Monday, Tuesday, Wednesday and Thursday. We will do the Courts of Justice Act, Bill 100; Bill 122 and Bill 123; and, if time allows, we will return to this.

Mr. J. A. Taylor: Mr. Chairman, there was some indication last week that by Tuesday of this week, the draft amendments would be ready.

Mr. Chairman: Yes, they were in our offices yesterday.

Mr. Renwick: Does that mean that there will be reprinted bills available?

Mr. Chairman: Hopefully by Friday. Tomorrow. Did you all receive your amendments yesterday?

Mr. Renwick: Yes, I did.

Mr. Chairman: I did too.

Mr. Breithaupt: I have mine.

Mr. Chairman: Jim, maybe you did not have time to look at your mail.

Mr. J. A. Taylor: Sometimes the mail is tardy, I confess, in the Hearst Block.

Mr. Chairman: That is another problem that we will not discuss right now.

Mr. J. A. Taylor: Sometimes it goes to my previous office here before it gets over to my other office.

Mr. Chairman: The clerk informs me they were delivered by messenger.

Mr. J. A. Taylor: I am delighted to hear that. That is comforting.

Mr. Renwick: While we are still at it, I would like to express my--I hate to use the term--profound regret at the response from the Law Society of Upper Canada. Basically, what they are saying is that they are not interested in commenting on the white paper but that a long way down the road, when they have seen the legislation and so on, they will be able to approach the ministry and get it altered behind closed doors, if I can coin a phrase, and they will never have to face any public discussion of the conflict of interest questions.

They have a specific statement in the white paper that the act should be amended to make external advisers, lawyers, auditors and valuers accountable if they knowingly participate in a breach of the conflict of interest provision of the act. Then, they go on: "The governing body should be invited to consider and advise the government as to the changes they propose to make in codes of conduct and ethics that govern their members, to prevent the involvement or participation of those members in conflict of interest situations."

In the face of that clear statement in the white paper, I find it most upsetting that the law society did not appear. I can understand that the treasurer is a busy person. It indicates to me that they are not prepared to come to a public forum and discuss the questions of the conflict of interest of the lawyers who were involved in the grave concerns that have been highlighted so much in the Morrison report, elsewhere and in people's minds.

I am not trying to ask them to deal with the instances of the problems that were created by the Cadillac Fairview transaction and the related transactions. I am saying that I find it quite unbelievable they are not prepared to come and discuss these very serious questions.

One could pose the proposition that had the professional advisers of the organizations acted rigidly in accordance with conflict of interest provisions, they may well have headed off some of the problems that arose. I do not think by ignoring them or failing to deal openly and publicly with it they are serving the public interest.

I do not know whether there is any point in replying in those terms to the undertreasurer of the law society, but at least I wanted to express my concern about it on the record.

Mr. Chairman: Thank you for letting us know of your concerns. Are there any further members wishing to discuss this particular matter?

If not, Mr. Breithaupt suggested in yesterday afternoon's session that we may return to C-10, item 8, this morning and have a little discussion on it.

Basically, it was the proposal, "The maximum investment by a loan or trust corporation in another corporation, other than a subsidiary, should be reduced from 20 per cent to 10 per cent, making it less likely that a number of corporations acting secretly and in concert can avoid the provisions of the act." Mr. Breithaupt felt we should be able to spend a little bit more time on this very important issue.

Mr. Breithaupt: In this matter, Mr. Chairman, you will notice there have been six commentaries on this particular point by various groups and corporations that have come before us.

I am wondering now if Mr. Crosbie or Mr. Thompson have had a chance to consider those half-dozen views and whether they still hold to the position in the white paper that a useful result can be expected by making this change from 20 per cent to 10 per cent. I ask that because, even as a general principle in the white paper, the comment is that it makes something less likely, although it does not perhaps stop without question that which we want to stop.

Perhaps we could hear whether there has been any mellowing of the views on this particular item because of the presentations that have been made.

Mr. Crosbie: I think one has to concede that there is no magic to the 10 per cent or the 20 per cent level or the existing 30 per cent level in the federal legislation. The reasons are set out in the white paper. Also, I think it was a reason that appears to have been adopted by the federal government in their white paper, where they were recommending a 10 per cent level.

We thought it was advisable to spread the risk, if you will, and the concentration of control. Ten per cent makes it more difficult to have a collusive arrangement than 20 per cent.

They are rather simple and basic reasons. I suppose, as has been expressed by the companies who obviously would like to keep their market as large as possible, they would prefer a larger number.

Mr. J. A. Taylor: There is no prohibition, is there? Is it not just a prerequisite of the consent of the registrar prior to transfer of something greater than 10 per cent?

Mr. Crosbie: I am sorry, are we not talking about C-10?

Mr. Chairman: Yes, we are on C-10, item 8.

Mr. Crosbie: We are not talking about transfer of shares, but investments in a corporation other than a subsidiary. The basic nature of this type of investment is supposed to be a passive investment. It is an investment for income-earning purposes.

The desire to have more than 10 per cent, I suppose, can arise out of two rationales. One is that it is a good investment and you would like to get as much of it as you can.

With the dwindling of the mortgage market, there are pressures on trust and loan companies to find other areas of investment. To that extent, this makes it more difficult for them to find investments if we limit the amount they can put in any given company. So there is quite a legitimate argument for going to a higher percentage than 10.

10:40 a.m.

On the other hand, the other reason is that 20 per cent in many cases might be a controlling interest in a company. It might encourage people to take more than a passive investment in the corporation, which we think is contrary to the general principles that are set out for investments by trust and loan corporations.

Mr. Chairman: Anything further from any of the members?

Mr. Renwick: Which is the actual section that contains the 20 per cent limitation?

Mr. Thompson: Clause 185(1)(b).

Mr. MacQuarrie: On this, has there been any indication that the present 20 per cent allowance has caused any difficulty? Have we evidence of companies acting in concert, collusive arrangements and all that sort of thing? I am just asking: has the present clause caused any difficulty, or are you putting up some phantoms here?

Mr. Crosbie: I think in the last exercise of the trust companies, certainly there were a lot of collusive arrangements of which they took advantage.

Mr. MacQuarrie: Would they have taken--

Mr. Crosbie: Ten per cent of the stock?

Mr. MacQuarrie: --ten per cent or 20?

Mr. Crosbie: I cannot say.

Mr. Breithaupt: What about the view of Canada Trust with respect to the federal legislation permitting a level of up to 30 per cent? Their comment is that a national company particularly would be put in an unfortunate or unfavourable position with varying percentage requirements away from a common standard.

Mr. Crosbie: I think we were influenced to some extent by the federal recommendation that they go to 10 per cent. I think one would have to be careful that we do not get out of step with the national standard.

Mr. Breithaupt: So the federal proposal is for 10 per cent now?

Mr. Crosbie: Yes.

Mr. Breithaupt: Although that is not currently?

Mr. Crosbie: That is right.

Mr. Breithaupt: Currently it is 30 per cent?

Mr. Crosbie: Yes.

Mr. Breithaupt: I see.

Mr. Renwick: There was a reference in something which I have read that the three particular trust companies involved were at one point thinking of 10 per cent in one of the banks, resulting in a total of a 30 per cent interest which, if it was not majority control might very well have been, and apparently was designed to be, effective control. That is at the 10 per cent level, so whether 20 or 10 affects the purpose or not, I do not know.

I do not have a great deal of trouble with reducing it to 10, simply from the point of view of your diversification of a portfolio. I think in a large company, they are not likely ever to get up to 10 per cent. When you get into 20 per cent, you begin to be talking about a concentrated block of shares in something called a smaller company. I think the dynamics of it make it quite likely that there would be some temptation perhaps to enter into an unspoken arrangement.

Mr. Crosbie: I think in support of that position in the first paper Guardian Trustco say, "The depositors' interests are better served when the investing trust company has a major say in the corporation invested in." It is my understanding that trustee investments should be passive investments.

Mr. Breithaupt: It is interesting to note that with two of the six applicants who commented to us on the subject, from a clipping from the London Free Press it would appear that Manufacturers Life has the largest single holding in Canada Trust, about 20 per cent control of the common shares. It may be that the two separate presentations have some common theme of authorship, or at least of interest, as they look to their own relationships.

Mr. J. A. Taylor: Getting back my concern, Mr. Chairman, about the clause "except as specifically approved by the registrar," are there some exemptions proposed in regard to this?

Mr. Thompson: We have none proposed, but I think if you look through the comments by the various companies, there is some merit to those of the trust companies about preferred shares, saying that there are major private placements of preferred shares that might inhibit the marketplace.

The other concern I have is that the market itself, the number of corporate shares that meet the quality test of the five-year dividend earning record which financial institutions are

permitted to invest in, may tighten up to some degree. You may want to lift that at some time.

Taking Bell Canada as an example, there is a limited amount of its shares to go around in any event so that keeps it pretty low, but if there were a major issue the financial institutions wanted to place their moneys in, they may well be held back by that limitation.

Mr. J. A. Taylor: What I am trying to determine is whether or not this is an absolute prohibition or whether it is subject to some discretion on the part of the registrar?

Mr. Thompson: That would be the only case, I would think. An overall ability to get into a preferred-share private placement of a number of financial institutions might be an instance.

Mr. J. A. Taylor: So the proposal in the white paper is not for an absolute prohibition of ownership above 10 per cent?

Mr. Thompson: It is certainly there, except for exceptional circumstances.

Mr. J. A. Taylor: Yes, so there are exceptions.

Mr. Crosbie: I would remind the registrar one of the reasons we have put the qualification in is that we were thinking in terms of grandfathering the present situation. Obviously, there will be companies with more than the 10 per cent and an outright prohibition would require them to divest. Maybe, rather than a discretion, one writes in some sort of divestiture schedule.

Mr. J. A. Taylor: Is there any situation where a loan and trust company, in realizing on a security, would have to take ownership of the majority of shares of a corporation? In terms of protecting its investment, could such a situation occur?

Mr. Thompson: Yes. The act at present contemplates it under section 186. That would require an order in council.

Mr. J. A. Taylor: That would be an exception too, would it not?

Mr. Thompson: Yes. That would require an order in council if there was a general refinancing of a large corporation. There is a method of handling that.

Mr. Renwick: We would not have to be involved in a divesting situation under clause 185(1)(b) if we use the same legislative device that was used when it was introduced. It speaks about, "On and after a certain date no corporation shall make an investment." Presumably that means the actual act of making the investment would have to occur after the date specified. It would not require a divesting of holdings at the present time. At least, I would read it that way.

10:50 a.m.

Mr. Chairman: Have you concluded, Mr. Taylor?

Mr. J. A. Taylor: I think it is clear now that it would not be an absolute prohibition, from what I gather.

Mr. Chairman: Mr. MacQuarrie, you had a comment before I move on?

Mr. MacQuarrie: We are talking about grandfathering and the rest of it. What if a company currently owns 15 per cent and wants to go to 20 per cent? They are over the maximum that the act would then provide.

Mr. Breithaupt: If you are going to have this, I think it would be better to say that after a certain date no more than 10--

Mr. Renwick: That is what this says: "On and after the 14th day of April, 1925, no corporation shall...make any investment the effect of which will be that the corporation will hold more than 20 per cent...." You cap their investment over 10 per cent immediately, I would take it, in that wording of the bill.

Mr. MacQuarrie: I still have my basic concern, which is that if it works, do not fix it. Is the 10 per cent an improvement over the current 20 per cent? I really have not received an answer to that question, except some theoretical possibilities. I just want to find out what is particularly harmful about the 20 per cent.

Mr. Williams: Mr. Chairman, while we are reflecting on this, I have reviewed a lot of the briefs that were submitted. I have not had the benefit of Hansard as yet to see what the debate was on some of these issues. As I say, I have been following the activities of the committee to some extent.

Could you enlighten me, Mr. Chairman, since I am sitting in today as a substitute--and perhaps you, Mr. Thompson, could indicate--what the response was to First City Trust's proposals? I think Mr. Breithaupt has already referred to the suggested qualifiers put forward by Manufacturers Life as perhaps one way of getting tighter control on the situation without putting a total prohibition on. First City, I see, came up with its own type of formula for ensuring that one could invest beyond a 10 per cent minimum level rather than a maximum, provided certain qualifiers were applied. What was the thinking of the committee or your own thinking at that time, Mr. Thompson?

Mr. Thompson: I think the First City proposal is interesting because it does get at the possible problem we were aiming at. But apart from that, we did feel that diversification of a stock and bond portfolio was an important principle right across the board; for that reason we certainly do share the position of the federal authorities, who also feel that 10 per cent is the appropriate limitation, and we both come out with that as a general investment principle. They have not proceeded with legislation, and we are in the process of discussing our paper.

I think it is important that the two provisions be kept together, either adopted or changed to some degree in unison so we do not have any form of competitive imbalance between Ontario companies and federal companies. Certainly the First City proposal of notification is one that could be adopted if there were provisions with respect to an affiliate and declaring it as an affiliate to some degree and looking into transactions between the affiliate and the trust company per se. It is a workable solution to it.

Mr. Renwick: Coupled with the Royal Trust one about preferred shares.

Mr. Thompson: Yes.

Mr. Williams: The Royal Trust on which?

Mr. Thompson: Preferred shares.

Mr. Renwick: Royal Trust recommends that no limits should be imposed on investments in preferred shares.

Mr. MacQuarrie: On that First City Trust one, more and more trust companies are getting into jointly held service companies--data processing and this sort of thing--for their own convenience and for the convenience of their depositors, and I think First City Trust makes a very sensible proposal here.

Mr. Renwick: It would be consistent with the discussion we had yesterday about introducing a firm provision for disclosure with respect to all corporate investments, howsoever designated--up, down, sideways or around--so you have a complete picture of what is going on.

Mr. Williams: The First City proposal struck me as seeming to having some merit, but I did not know what the discussion had been. That is why I raised the point: to see whether it had been felt it was worth pursuing as part of that solution to the problem.

Mr. Thompson: Yes, I think it is. It could be workable simply because there is a semiannual reporting on stock and bond investments made by all companies, so it could fit into the existing regulatory mode.

Mr. J. A. Taylor: It might be more effective, actually, than going the other route if we went the route suggested by First City Trust. I am thinking of ways of getting around the 10 per cent.

Mr. Breithaupt: I would like to see in our summary on the comments, the underlining of the federal proposal, if that is to be 10 per cent, because once again as a principle or a point for discussion under the white paper the reason we got there is not spelled out, just as the item previously addressed by the delegation this morning resulted from not having that particular detail immediately available.

If a major reason for doing this is to have some national consistency because of proposed federal legislation, then I think we should observe upon it in our comments on this and say that until the federal legislation is clear, changes in the Ontario approach are likely not to occur; and when they do, the various points included in these other suggestions should be considered.

I think if we do that we will have dealt with the point in as practical a way as we can because, until the federal legislation is changed, I would think it would not be prudent to do the Ontario one and then perhaps have to change it again or not as the situation unfolds.

Mr. Crosbie: May I just comment on one aspect? One of the things we talked about among ourselves--we did not put it in the white paper--was whether this was the type of power that, because of the uncertainty of the federal position, you should have a regulatory power to vary, should the feds come out with their legislation. Then we could--

Mr. J. A. Taylor: My inclination is not to anticipate what the federal government might or might not do. I would be inclined to do what we think is the proper thing to do, and that might convince the federal government to accommodate Ontario's position.

11 a.m.

Mr. Renwick: Mr. Taylor has said it much better than I could say it, but I would just like to add a gloss on it. I think it is important for us to express exactly what we think should be done in relation to this discussion that has been taking place and hope it will go into our act, because it would not be the first time the federal legislation in the corporate world generally has adopted positions we have taken when they have got around to thinking about it themselves. I do not like to disagree with my friend the member for Kitchener, but I do not like the "After you, Alphonse," aspect.

Mr. Breithaupt: I made the point because it has come to our attention that this is part of the federal proposals now, although you would not know it from anything that is in the white paper at the moment.

Mr. Renwick: We could say we are aware of the federal proposals but we propose that the following be done at this time.

Mr. Breithaupt: That is fine as long as we put it in so we are not seen to be working in a vacuum.

Mr. Chairman: I thought we had discussed this matter somewhere and had suggested that it may be a year or two down the road before the federal government gets to it and we are dealing with--

Mr. Renwick: It will very likely be 10 or 20.

Mr. Chairman: I am being kind.

Mr. Thompson, before we leave this subject, what would happen if a company had made an investment in oil and gas holdings? After the oil and gas holdings appreciated, what would you do then with the 10 per cent rule?

Mr. MacQuarrie: Stock splits?

Mr. Breithaupt: It is the percentage of ownership--

Mr. Crosbie: It is the percentage. Your 10 per cent ownership might be worth twice as much, but it is still only 10 per cent of the shares. I would not say it would change.

Mr. Breithaupt: The old theme that the more water you put in the gravy, the more gravy you will get, does not necessarily work in this instance.

Mr. Renwick: I take it that what we are saying is basically some combination of the First City and the Royal. Is that what it is? It seems to me to be a sensible way to go about it.

Mr. Chairman: Fine. Now that we have concluded with item 8, I think we should move to page C-17, item 14, which is: "Borrowing and investment powers should be controlled by the registrar at the time of registration and annual renewal, with increased borrowing capability and investment powers being dependent upon demonstrated capability and resources." We had another recommendation that was made in the 1975 report of the select committee on company law.

Mr. Breithaupt: What controls exist at the present time, and how would this be a sharpening of or an improvement on what you can do now?

Mr. Thompson: What we really want is to have this more or less specified in the legislation. Certainly as part of the program on the examination of Ontario companies, coming up towards its borrowing limit, etc., it is part of the process; but it is not so on any companies other than Ontario companies, and we want it specified in the legislation as a consideration for renewal of registration in Ontario so it would be an acknowledged program that is part of the process of renewal.

Mr. Breithaupt: So you would rather see this made part of the statute than to follow the practice you have been following?

Mr. Thompson: Yes, and that it also be there for all companies that are registered.

Mr. Boudria: Whether they are extraprovincial or not.

Mr. Thompson: Right, so consideration is being given to a potential problem that might develop in the future.

Mr. J. A. Taylor: You are not talking about vesting additional discretion in the registrar. It would be a matter of definition and manifestation in the statute itself.

Mr. Thompson: Yes.

Mr. J. A. Taylor: Are there any specifics that would clarify what the white paper has in mind?

Mr. Thompson: I hope it will come out in the legislation, but the accent would be on providing that the requirements on initial incorporation should also be reviewed at the time of annual registration, and particularly in this area. To use this as an example, a company that is coming very close to its borrowing multiple, in order to continue to stay in business and accept further deposits, will have to make some decisions about whether to increase capitalization or to get an increase in that borrowing multiple.

We want that as part of a specific program that is discussed with all registrants. We can work out estimates that the borrowing multiple could be a natural growth of business and be exceeded in, say, a year's time. That would be part of the whole process.

We would then have an idea of what all registrants are doing. Either they are arranging for some form of share issue or increased capitalization or they are going to request a borrowing multiple. If that is the case, then we come back to the standards of their operation and whether they meet the financial standards set out in the registration as to quality of investments.

The emphasis is on this being a review at the time of registration, a statutory review of the whole future of a corporation for the next year.

Mr. J. A. Taylor: You get a fresh crack at the company each year.

Mr. Thompson: Right.

Mr. J. A. Taylor: How is that manifested? Initially, there would be an order in council, would there not, when the company was incorporated? I should not say order in council, but rather letters patent.

How would any changes that might become necessary by reason of the annual review be mandated?

Mr. Thompson: The important thing is to get it on a program, sit there at that time, discuss what that program is and have a clear objective for both the company and ourselves about fulfilling that program. If it is necessary, if the company is not in total compliance, then developing a program over six months, when it might in some way be in compliance with the quality of investments, would give the company an opportunity to get it on side for an increase in borrowing multiple.

Mr. J. A. Taylor: I am trying to get back to the exercise of discretionary power. A great deal of the law seems to be lodged in the mind of the registrar rather than being obvious to the public. What you have told me so far is that the discretion may still be the discretion of the registrar, except that it can

only be exercised on an annual basis. If you understand--

Mr. Thompson: I hope not. On the other hand, I hope there is a program to meet, at least for the ensuing year. If the registrar's role would be to recommend an order in council in certain circumstances, such as an increase in capitalization or something along that line, in order to fulfil that over the 20 times ratio we would have to have compliance with the quality of assets under regulation 591.

A change in the portfolio might be necessary for that, but we are trying to talk about this before the event happens, so with all registrants we are on an even plane and the problem has been anticipated and talked about.

Mr. Crosbie: In terms of the question you are asking, Mr. Taylor, the actual decision is not made by the registrar, it is an order-in-council process.

Mr. J. A. Taylor: I asked how it would be manifested, whether by order in council or--

Mr. Thompson: Yes, it would be.

Mr. Crosbie: Any change in the borrowing ratio or the capital would be by order in council. As the registrar pointed out, it is to be hoped there would be a program that would indicate to the parties what they had to do to qualify for the increase.

11:10 a.m.

We also point out on page 20 of the white paper that, "Annually, or whenever warranted by special circumstances such as a change in control, merger, or capital contribution, the status of the corporation's registry should be reassessed with a view to increasing or decreasing controls, restrictions and powers." Where that happened, an order in council would apply.

Mr. J. A. Taylor: You see, the white paper, if we are reading C14, says, "Borrowing and investment powers should be controlled by the registrar," when in fact it is controlled by order in council.

Mr. Crosbie: I think there is a bit of both. In terms of individual, maybe--

Mr. J. A. Taylor: I appreciate the influence of the registrar in assisting cabinet.

Mr. Crosbie: What I was referring to, though, is the fact that the borrowing ratio affects the maximum limit to which they can borrow, and that is determined by order in council. Now, within that process, various provisions of the white paper and the existing legislation would allow the registrar to influence a specific investment, and the company may not have reached its maximum borrowing limit yet. When you read the white paper you have to keep that in mind.

Are you talking about the registrar influencing a specific investment, or are you talking about determining the range or the maximum amount of investment that a company is permitted to have?

Mr. J. A. Taylor: I guess you would really have to see this in the form of draft legislation.

Mr. Crosbie: Yes. To give you a specific example, the registrar has the power to look at a mortgage and say, "That is overvalued." You call for a valuation and you bring the value down; this may affect the company's capital. That is a specific example of how the registrar would influence the investment of the corporation.

If a corporation has a capital of \$10 million and a borrowing ratio of 15, that determines its \$150-million limit on borrowing. As you say, the registrar in the process of the recommendations coming forward might influence the decision of the Lieutenant Governor, but he does not have the power himself to change those numbers unilaterally.

Mr. Renwick: I find this synoptic recommendation troublesome because of the actual wording of page 20. A very substantial and significant increase in the registrar's authority is contemplated over what is currently in the statute.

The key to it is that the initial registration and the annual renewals provide the most effective mechanism to assure that the standards are maintained. Thereafter, in the rest of that statement on page 20, it is a question of the registrar's discretion, and it is extremely broad; it is much broader than it is in the current act.

The only saving grace about it is at the top of page 20, where it says, "The registration should be modified and expanded to permit greater borrowing multiples and wider and more flexible investment powers, but always subject to clearly defined general and specific standards and constraints." I thought that was the direction of Mr. Taylor's remarks.

Mr. J. A. Taylor: Yes, that fundamentally was my concern, in that those powers may or may not be manifested in the legislation as it is drafted. There just seems to be a great deal of uncertainty as to what additional powers there would be, apart from the one that is explained, which would be embodied in an order in council, concerning the borrowing ratio.

Mr. Crosbie: I am just making my comments on the process. There is no question the present recommendations are going away from the current practice of the registrar making recommendations and the order in council being the process.

On page 20 it is recommended that the power that is currently held by the Lieutenant Governor in Council through order in council be exercised by the registrar, subject to an appeal to the commissioner. Then they get back into the appeal process we briefly talked about yesterday, the possibility of the

commissioner and the advisory committee exercising business judgement on the type of borrowing powers or ratios a company should have, having regard for its business position.

Mr. J. A. Taylor: I am not concerned with the judgement of Murray Thompson. He too is mortal. I would not want to see some czar take over, who might be oppressive.

Mr. Chairman: But there is an appeal mechanism.

Mr. J. A. Taylor: I know. I understand appeal mechanisms too. It is a matter of trying to run a business and what the practical solutions are.

Mr. Chairman: There being no further comments on item 14, we should move on to item 15: "Loan and trust corporations incorporated outside the province but carrying on business within the province should be closely regulated in the same manner as Ontario loan and trust corporations. The registrar should have the power to impose limitations on their registry and the power to control their activities according to rules based on competence, responsibility and fitness."

We have a number of exhibits.

The researcher has just mentioned that we discussed item 15 in conjunction with recommendation 1. The member for Kitchener (Mr. Breithaupt) had a number of comments. So we can move on to item 16, unless any member has further questions on item 15.

Mr. MacQuarrie: I am still puzzled, Mr. Chairman, by how we attempt to develop rules relating to competence, responsibility and fitness.

Mr. J. A. Taylor: That should be under Culture and Recreation.

Mr. MacQuarrie: Citizenship and Culture.

Mr. Chairman: Would you so move, Mr. Taylor?

Mr. MacQuarrie: That is just a comment. I find some of these things are easy to set out in general terms, but when it comes to refining them, there are problems.

Mr. Renwick: Obviously the ministry was not interested in it when Central Trust took over the estates, trusts and agencies business of Crown Trust.

I asked the question in committee, and did not get any answer, as to whether Central Trust was competent to handle the immense ETA portfolio of Crown Trust. It was more or less indicated that it was rather a naive question, that of course they were competent to do it, otherwise the government would not be selling it to them. But the basis on which they determined their competence to do it was not disclosed. I think it was decided on a scale that they were relatively more competent than those who were handling it at Crown Trust.

11:20 a.m.

Mr. Chairman: Now we have heard all the comments, let us move on to item 16: "The registrar should have the power to require corporations to take remedial action where required, including the power to require increases in capital, cessation of investment and reduction in borrowing capacity."

Page C-21, Jim, item 16.

No briefs were addressed to this recommendation. Is there any discussion on it?

Mr. Breithaupt: Is it the intention to have this in the statute as opposed to what I would have presumed was the general and, indeed, responsible power of the registrar at the present time?

Mr. Renwick: I take it this is a substantial procedural change, because this will be involved with our friend the commissioner. I gather that all of these things will be appealable to the commissioner. Is that the intention?

Mr. Thompson: Yes.

Mr. Crosbie: Yes, I think most of these would and I think it would be in the statute.

Mr. Renwick: That is a very substantial procedural change.

Mr. Crosbie: I am saying I think this would be in the statutory power.

Mr. Breithaupt: I realize that, but I also wondered, following the earlier comment, whether anything results from this that you cannot do now. Is it only to sharpen the focus so it is clearly set out in the legislation and not subject to a rule of thumb, a guideline or whatever, which might not be as forceful a tool to use should the occasion arise?

Mr. Crosbie: I think there is definitely a sharpening of the tool here in the sense of being able to move in a timely manner. There are certain types of activities, a type of borrowing, that you may wish to limit.

You get circumstances where perhaps the company has already overborrowed and it should shut down its borrowing operations entirely until it is on side again. Unless you have some mechanism to compel that, the company can go on borrowing, even though it is in excess of its limits.

Mr. Breithaupt: I have no quarrel with having it in the statute. I was just wondering if any additional power was effectively being sought. As I understand it, this is not the case; it is a matter of being able to waive a particular section and get an immediate attendance to the problem.

Mr. Crosbie: Yes.

Mr. Renwick: I take it the process we are talking about--and it is not absolutely clear here--is that there will be a significant reduction in the Lieutenant Governor in Council authorities required, there will be a significant increase in the powers of the registrar and then there will be this question of all the decisions of the registrar being subject to appeal to the commissioner.

I take it that, in a sense, cabinet will be shedding whatever residual responsibility it had for trust companies, which will all devolve upon the registrar and the commissioner. The minister will stand in the House and say that all he can do is report for the commissioner and for the registrar, that the statute determines what they are doing and that we passed it in the assembly--

Mr. J. A. Taylor: And you voted for it.

Mr. Renwick: --and voted for it, and any thought that he is accountable for the registrar or the commissioner, other than to report, is strictly a figment of the opposition's imagination.

That is the process I see. I am perhaps a little cynical.

Mr. J. A. Taylor: The sharing of accountability.

Mr. Renwick: Right now the cabinet is on the hook with very significant responsibilities under this act. You read through this thing and there are certain powers the registrar can exercise. He has to look very closely at the act and there are all sorts of things the Lieutenant Governor in Council does. I gather that in the new act this will disappear.

Mr. J. A. Taylor: So, contrary to Mr. Breithaupt's observations, there will be more clout in the hands of the registrar.

Mr. Breithaupt: At least it will be a more timely situation.

Mr. J. A. Taylor: I am not suggesting it is right or wrong. It is a matter of indicating where it ultimately rests. My concern is always how well it is defined, so one knows what powers there are and what powers may be of a discretionary and therefore variable nature.

Mr. Renwick: The ultimate bureaucrat, Mr. Crosbie, sat here yesterday and indicated quite clearly there are some people who want to get to the minister and interfere with the minister, or get the minister to interfere with the performance of statutory duties of the registrar and such persons. In fact, we are going to be building a legislative framework to create a registrar and commissioner pillar, which will be removed from accountability to the assembly because of the relationship of the commissioner to the minister and because of the statutory nature of the office of the registrar. You have a seal, have you not?

Mr. Thompson: Yes.

Mr. Renwick: What could be more formal? He has a seal of his own.

Then the cabinet will not have any responsibility because all this reporting to the cabinet will have disappeared and so will getting an order in council. All that will go out of the system. It is a very interesting white paper, the more you think about it.

Mr. Crosbie: Mr. Renwick, I would draw your attention to page 38--

Mr. Thompson: You are getting a reaction.

Mr. Crosbie: Would you care to read it, Mr. Renwick?

Mr. Renwick: The very last sentence?

Mr. Crosbie: Yes.

Mr. Renwick: Somebody added that on.

Mr. Crosbie: "In introducing appeals to the commissioner of--

Mr. Renwick: It must have gone to the third printing.

"In introducing appeals to the commissioner of financial institutions from decisions of the registrar, it is not proposed that there be any modification of the act affecting the final authority of the Lieutenant Governor in Council."

The Premier (Mr. Davis) will be pleased to hear that. Of course there will not, but in fact there will be.

Mr. Chairman: Thank you, Mr. Crosbie. My respect for you continues at a high level.

Mr. Williams: I am at a disadvantage, not having been at all the hearings, but I am surprised by the fact there was no formal response to this proposal, which is fundamentally important.

What is that, Mr. Taylor?

Mr. J. A. Taylor: On that last comment by Mr. Renwick on review of the registrar, I was thinking it was analogous to an elephant making love. All the action is in high places, but the love gets trampled underfoot in the process.

Mr. Williams: I hope that comment is not attributed to me in Hansard.

Mr. Breithaupt: Perhaps we could have that as the frontispiece of the report.

Mr. Chairman: It is self-explanatory.

11:30 a.m.

Mr. Williams: I guess it is just an observation out loud. I am surprised there was no response from the industry on this item. Mr. Renwick and others throughout the hearings have expressed concerns about the large discretionary powers that would be vested under the proposed changes. Certainly this would have with it some significant and far-reaching discretionary powers effectively to shut down the operation of a company, if only temporarily, to ensure that it comes into line.

I can only assume the fact that there were no responses or reactions to giving this broad discretionary power, assuming it will be translated into a specific provision in the statute, can only be taken as implied consent to or concurrence in the recommendation. Certainly we could not interpret it any other way, because an extremely important discretionary power is being given to the registrar. I assume the industry has taken it as a bona fide one that goes to the very heart of the problem at hand as one of the viable solutions to this problem.

Again I can only say that I am surprised it did not at least draw a reaction out of some of the witnesses who came before the committee.

Mr. Chairman: Your comments will be noted. Just before we leave this particular section, in the "Miscellaneous" area, Canada Trust and Co-operative Trust were concerned about the decision to open a branch. It is on page C-25. I wonder whether the members have any comments or concerns about this provision. Co-operative Trust says, "It is submitted that it is not practical or even necessary that a trust company should have to seek approval from the registrar before opening a new branch (see page 17 of the white paper)."

Mr. Boudria: We are going back, it would seem, to what we talked about a lot before. I think it all relates again to the theme of public necessity and convenience. Somebody may establish a trust company in a place where it may be needed only to open branches later that are bigger than the head office, in order to serve an area elsewhere that is more lucrative but where there is no public necessity and convenience.

What you want to do, of course, is say, "Look, this is not the same as what you really set out to do in the first place; and besides, you are extending yourself too far in this venture because you are a new trust company." That has really been seen, as a matter of fact. At least one if not more of the trust companies that brought us here initially had that as part of their doings.

Mr. Crosbie: If I could put a slightly different interpretation on that issue, basically you come back to the purpose of regulating a trust company or a loan corporation. It is not that we want to have some regulatory control over the growth and development of trust companies in Ontario in the sense of

bureaucrats trying to direct it. Our responsibility under the act is to exercise controls in the interests of protecting the depositors, the investors and the creditors of the company.

If we see a situation that is financially imperilling the operation of a trust company, then presumably the Legislature and the public expect the registrar to do something about it, whether it is to interfere with their borrowing, stop a bad borrowing practice or whatever it is.

When we came to this question of branch offices, our concern was that from our own experience we are aware of situations where a trust company does not have the financial capacity to open a branch office. What happens if they come in and say, "We are going to open a branch office"? That is why we said it had to be subject to the registrar.

If they come in and say, "Here is what we are going to do. It is just going to be a small branch office with two people. It will cost us \$50,000 a year to run it," maybe we could approve that sort of thing. But if they come in with a plan that exceeds their capital or their financial capacity to do it, and to do it is going to imperil their operation, then I do not see how you can treat that aspect of their work any differently than you do anything else that imperils their operation.

I realize there is a continuing observation, and I cannot disregard it, that we do not want the bureaucrats running the trust companies. I could not agree more, but on the other hand, Mr. Renwick reminds us that when this act is completed, he expects the bureaucrats to be on the hook and not to slide off, if they let a trust company get into trouble somehow when they could have controlled it.

Mr. Boudria: It is obvious that opening a branch is very expensive, although I suppose if Canada Trust opens an additional branch, considering the large number it has now, it is not a major concern. However, if some trust company has one branch and wants to open two more all of a sudden, that obviously has a far greater impact. I can see a concern there.

Looking at it the other way though, say a trust company with six employees suddenly one morning gets a bright idea that it is going to have a much larger storefront operation; it is going to hire 12 new people and it is going to get all this going within the next six weeks. Of course, you do not have a similar authority over that very large expansion, because it is not moving any place. It will be expanding and building in the same location and so you do not have a parallel authority. I wonder what one authority will give you, if you do not have the other.

Mr. Crosbie: Exactly. There is no question that is one of the very difficult aspects of trying to devise a regulatory system. You have to draw a line somewhere and say you are not going to regulate any more than what we say here.

It could be argued we should disregard trust company branch offices. That is something we could let go and not regulate. We

can catch it if we find there is an impact on their capital. If they get into financial trouble, we should act then, but we should not interfere if a company wants to set up a branch office. That is an alternative. I suppose if it were clearly indicated in the act or understood that this was the rule by which the game was going to be played, then we could work that way.

Mr. Boudria: I thought this whole principle of regulating the branches was specifically because it gave you the authority you were supposed to have all along, this whole business of serving public necessity and convenience, which we have worked around right now in this issue, as opposed to what you are saying, regulating an accelerated expansion of a trust company that might be able to be done some other way, because there are aspects of it over which you do not have authority under this mechanism anyway.

Mr. Crosbie: I think our discussion yesterday about the recommendations of the 1975 report tended to direct the public necessity in terms of a test of the economic viability. If the company is economically viable in a community, then presumably there is a need for it or a place for it.

Mr. Boudria: How does that apply to a new one? If there is not any, how could you measure that?

Mr. Crosbie: That is one of the reasons we want to have some sort of approval process. If they are coming in and you are looking at the investment they are going to make in an uncertain market or a heavily serviced market, then the registrar might say, "That is going to imperil your operation and you should not do it." But if they are going into a very good market, with a reasonable investment, there may be no concern.

I realize this is getting right to the heart of a business judgement call of the board of directors. But everything we are regulating can be regulated by the board of directors, by and large. It does not give me a great deal of comfort to say that because the board of directors are going to exercise good business judgement, you do not need regulation. If that were true, you would not need the act.

Mr. Boudria: We need the act.

Mr. J. A. Taylor: I was wondering, Mr. Chairman, going back to that comment about the--

Mr. Chairman: The elephant?

11:40 a.m.

Mr. J. A. Taylor: No, about the bureaucrat being made more responsible and accountable. As we vest more and more authority in the bureaucrat, will the legislation then include a clause stating him harmless and indemnifying the bureaucrat from all court proceedings and so on, as sometimes happens in legislation?

Mr. Crosbie: Let me just comment on that in a different

context. You go out and try to hire a professional organization to do very risky work for you and you will find an indemnification clause in the contract, holding it harmless. If it acts in good faith and to the best of its professional ability, the organization will want you to hold it harmless from circumstances that arise notwithstanding its best efforts.

Mr. Mitchell: The municipalities use an indemnification clause in all construction projects undertaken by them. There is a harmless clause in each one of them. A contractor working for the municipality will do the same. There is one in just about everything you go into.

Mr. Crosbie: I think you have to realize--and I am sure from comments I have heard in this committee it is realized--that the responsibility set out in this act is a very onerous one for a registrar to accept. It is one that he will feel you are not paying him to accept.

Mr. J. A. Taylor: I think we should, then.

Mr. Crosbie: Well, maybe so.

Mr. J. A. Taylor: I am just wondering about the self-regulation principle. Surely there must be some final accountability or responsibility somewhere. I am thinking in terms of substitution of judgement and taking positions, which may or may not be good. They may be worse than the ones being corrected. Then you end up protecting those judgements because they were made by a bureaucrat instead of by someone from the private sector.

Anyway I am just musing.

Mr. Chairman: That is obvious.

Mr. J. A. Taylor: I gather something such as that may happen.

Mr. Renwick: Just musing on another point before we go on, I have not specifically ever thought that the public necessity and convenience test is a question of second guessing management about whether or not it is going to open the office. That was a test devised in the United States to judge whether you were granting someone a monopoly if you were granting a certain exclusivity of privilege of operation to them.

I have never practised before the Ontario Highway Transport Board but I have always thought the concept of public necessity is used there to mean the board is regulating an industry in which someone has to have a licence in order to engage in the industry, but there is always a question of when competition comes in to serve the community. I have always thought the power of the registrar was related more to the community where the branch office was going to operate, not to a situation in which the office was being opened because it could be afforded.

But more on the question, do we let this competition take place in an area where there is, for example, a small, thriving

trust company? Take an example of a small town such as Hawkesbury or some place, where people put together under Mr. Boudria's leadership a small trust company and--

Mr. Mitchell: Did you say "trust" company?

Mr. Renwick: Yes, and then Royal Trust or an equivalent company comes along and says it is going to open a branch office there. I always thought it was not entirely a question of second-guessing the Royal Trust management on it, but of whether or not the public interest is served by the forcing out of business or the amalgamation with the local trust company. That is what I always thought the concept of public necessity and convenience was, as developed in the United States, which is always very sensitive to questions of monopoly and competition. When they moved into regulations, someone had to coin a phrase and someone coined this one.

I think that is where it came from. It is not indigenous to Canada; I think it is indigenous to the United States.

Mr. Chairman: Are there any further musings by any of the other committee members?

Mr. Renwick: I would be interested if that is not a significant part of public necessity and convenience. If I had my druthers again, I would have gone the way we went the other day in the select committee report. I would not have dropped the term "public necessity and convenience," but I would have clarified more the kinds of considerations that should be taken into account in determining public necessity and convenience.

Mr. MacQuarrie: The muse has made me mute.

Mr. Chairman: With that, perhaps we should move on to the ownership question.

Mr. J. A. Taylor: With respect, Mr. Chairman, I think Mr. Renwick has raised a question that might require a response, because they are different judgemental matters. In the first instance it is whether or not the public is adequately served--in the case of a branch office, the test of public convenience, whether the public needs that particular branch.

Is that the type of judgement that is being made? Or is it whether that particular company can afford to put an additional branch down the street somewhere?

Mr. Crosbie: In practice in the history of the regulations I am not aware of any company that was refused letters patent on the grounds there was no public necessity for it in the community in which it wished to open its offices.

As the registrar has pointed out, one of the processes in incorporation is that we like to see some sort of business plan, what work they have done to identify their market; and usually they come in with some sort of indication that there is a public need and they have identified a public need to serve. Where they

have not been able to do that, they have been sent away to do that sort of thing.

Mr. Thompson, are you aware in your experience of any corporation that was refused because of public necessity?

Mr. Thompson: No, not on that ground.

Mr. J. A. Taylor: Mr. Chairman, we are going over the white paper section by section, and you are receiving our comments. I think the general impression of the members of the committee initially was that the white paper might manifest overkill to some degree.

We are not detracting from the need to tighten up where necessary in order to streamline or upgrade administration, but at the same time, if the general impression of all parties in the committee was that we have to be careful not to use overkill, then surely this impression was gained from somewhere in the white paper.

As we go through these clauses I am just trying to point out that I think we have to be careful. While we recognize the fundamental necessity for government to support the financial institutions of this province and of this country--and that in itself, of course, requires control and supervision on the part of government--nevertheless, we still must be mindful to ensure that these financial institutions are run by the private sector and that there must be some scope for the management of those institutions to exercise their own judgement and not become so tied up in the bureaucracy and in external judgements that they cannot function properly.

11:50 a.m.

Mr. Chairman: I agree basically with what you are saying. We are talking about a fine line that we are trying to walk as a committee, and we should be reasonable on both sides. But when it comes to regulation, if you are going to regulate, you are going to have to have the powers to enforce it.

Anyway, we should move on to limitation on ownership, which is on page D-1 of the briefing material by the researchers. The first proposal is:

"The present provisions of the act introduced in 1982 requiring the consent of the registrar for the transfer of shares of Ontario loan and trust corporations and their holding corporations where the acquirer owns or controls 10 per cent or more of any class of shares should be extended to apply to all loan and trust corporations carrying on business in Ontario. The registrar should be given the power to cancel or modify the registration to do business in the event any transfer is made affecting such a corporation contrary to the provisions of the act, or where the registrar is denied information from any such corporation respecting beneficial ownership."

We had a number of exhibits in regard to this particular concern.

Mr. Boudria: Mr. Chairman, has anybody been able to clarify yet the Canadian Depository for Securities issue? Last week we were talking about it and I think somebody was supposed to do more looking into the effect this would have on them and whether or not the concern they had was bona fide, whether it would actually happen. I think we were supposed to find out more. Perhaps it was brought back and I was not here.

Mr. Crosbie: No, we have not got back on that.

Mr. Boudria: I think it is important to know, regardless of what we do, whether or not an exception for them or for people who do the same type of work as they do would be warranted.

Mr. Crosbie: Yes, we undertook to look into that, but I am sorry I cannot report back to the committee today on it.

Mr. Boudria: Then we will have to come back to D-1 at some point for that particular aspect, Mr. Chairman?

Mr. Chairman: I hope that we will be back to it, yes.

There being no further comments on D-1, and we will return to it, perhaps we should move to D-2 now.

Mr. Renwick: I do not see any basic problem with D-1.

Mr. Chairman: We will move to page D-2, item 2:

"The criteria for the registrar giving or withholding his consent to transfer shares should be based on those criteria applicable to the incorporation of a loan or trust corporation in Ontario."

Mr. Renwick: That is consistent with the discussions we had yesterday.

Mr. Chairman: Fine. We will move on to D-3, item 3:

"An appeal to the Lieutenant Governor in Council from the registrar's decision should continue, but an intermediate appeal to the commissioner of financial institutions would be introduced."

I think we have discussed that. Are there any questions by the committee on that item?

We will move to page D-4, item 4:

"No absolute limitation on the ownership of the shares of loan or trust corporations operating in Ontario is proposed at present, although such a limitation was seriously examined and some discretion in this respect may be desirable."

We had exhibits from eight groups. Is there any discussion on item 4?

Mr. Boudria: I guess that Canada Trust speech of Mr. Lahn, which we had a copy of--I think it is one of our exhibits, although I forget the number now--certainly had views in it that were different from those of just about everybody else--maybe not just about everybody else, but several others in the same industry. Some people say it is understandable because that has been an existing situation with them; therefore, it is easy for them to say--that type of thing. But a lot of us are still having some difficulty in understanding which side to be on.

I am looking for the name of the organization that submitted exhibit 19. They were telling us--

Mr. Chairman: The Trust Companies Association of Canada.

Mr. Boudria: Yes. They say in their brief it is important to have individuals who own a large number of shares in the company because their leverage on management is such that they can keep them in line--or something like that. I am paraphrasing.

They were asked, "Is it not true that the same leverage could be applied by a majority shareholder to make management do things that could be out of line?" Presumably if he has the strength to do one, he may or may not have the strength to do the other. They seemed to disagree on that aspect. They said their people are all good and this type of thing could not happen.

On the other hand, there are reasons we are here in this committee right now, specifically because things have gone wrong in the industry over the last couple of years. Some people think this is the heart of the whole problem. It is obviously going to be a difficult one.

Mr. Crosbie, do you have any comments on the Canada Trust brief?

Mr. Crosbie: My comment would be that it reflects the two basic arguments. We have said from the start the position in the white paper is obviously the position we arrived at. In arriving at it, we could not totally discredit, and we were not even attempting to discredit, the other argument. It is another argument.

As you have just pointed out, if you have majority control of a company, you can use it for good or evil. You have better control over your company and you make sure management is responsive to your requirements. If you are a good owner, you can get good results. If you wish to abuse your ownership and subvert your staff, then you can cause problems. That is the criticism.

As you have heard from some of the smaller trust companies, it was also very critical to them in capital-raising times and difficult times that a single owner was able to find capital that might not have been available had it been a widely held company. So there are pluses and minuses.

We have heard the argument that the 10 per cent ownership spreads ownership. In effect, it entrenches management so the

shareholders themselves have very little control over the company and they cannot control it for good or for ill. Management decides the course of direction of the company. If it is good management, you get good results; if it is bad management, you get bad results.

It is interesting that Canada Trust is a company that has a 10 per cent ownership situation, by and large. It is a management that is threatened and the imposition of a 10 per cent rule removes that threat. So its recommendation is not entirely altruistic. Let us put it that way.

Mr. Boudria: They refer to a shark repellent.

Mr. Crosbie: I think they have a motive for expressing the views they do. That is all I am saying. It is an argument that is consistent with their position that shareholders should not control the management of a company, except in a general way through the election of directors, which may sometimes be more closely influenced by management than it is by shareholders.

12 noon

Mr. MacQuarrie: Mr. Chairman, we have heard the Canadian Bankers' Association and we have seen the Canada Trust brief. Both of them, and I think one other, hung on the 10 per cent limitation in terms of share ownership by one individual.

To my mind, corporate control can be exercised in some circumstances by a lower percentage of shares than 10 per cent, depending on how broadly based or dispersed the shareholdings are. In a small, closely held company, it can be exercised by people holding a majority of the shares. We have heard this question of limiting ownership to a certain percentage was introduced in the banking system to prevent the takeover of Canadian banks by outsiders.

From the point of view of limiting the number of shares an individual can hold, the white paper recommendation is a sensible and an eminently logical one. Ownership is really not the key problem, as long as we have the other controls we propose to introduce.

On this question of entrenched management, we have heard the banks say a very small number of shareholders attend the shareholders' meetings, so management tends to get entrenched. We should maybe explore the possibility of appointing public-interest directors to some of these financial institutions.

That is all I have to say at the moment, but the question of corporate ownership and control is not one that can be handled simply by 10 per cent or 20 per cent or whatever limitations.

Mr. Chairman: Do you have any comments, Mr. Crosbie, or shall we move on to Mr. Renwick?

Mr. Crosbie: I think we should move on at this time.

Mr. Renwick: I do not have any difficulty with this

recommendation. You will notice I have arranged for my colleague, Mr. Cassidy, to be absent during this discussion.

Mr. Mitchell: We noticed you were going in some minor opposite directions.

Mr. Gillies: Nothing serious.

Mr. Renwick: I think all the other members of the committee were. I do not know whether Mr. Cassidy realized it or not.

If D-1 is one of many things we would be doing to try to protect the public interest--that is, the question of the registrar's consent to the transfer of shares and the considerations that would have to go into that operation--I do not underestimate what could happen to a company if a controlling shareholder is manipulating that company.

I do not want anybody to understand that I think every controlling shareholder is a good thing. On the other hand, I do not want to think for a moment that every entrenched management is the best thing either.

If one looks at the whole of the story of the attempted takeover of Royal Trust by Campeau, it is a fascinating one. There was certainly never any indication--except perhaps in the mind of Mr. Kenneth White--that it would not have been a good thing for the province, Mr. Campeau or for Royal Trust if Mr. Campeau had been successful.

I was pleased I had a response, but the response of the representative of the Canadian Bankers' Association, in this case of the chairman of Toronto-Dominion Bank, was if he had knocked more politely and just come in for maybe 20 or 30 per cent, that would have been much more acceptable.

I did not want to pursue that because, of course, the other fascinating one is that Mr. Ellen and Mr. Cohen were knocking politely with Crown Trust over a period of time. I asked for a copy of the judgement, but I have not got it yet. They ultimately sued the Canadian Imperial Bank of Commerce, which had the swing shares and favoured someone else. I am told the judgement was in their favour. One does not have to be a genius to realize that if they had been successful, we would not have had the problem, certainly in the dimensions we have had it. The very people who were excluded from the operation now have the business of Crown Trust.

I think the brake we are going to provide on the registrar, and I think this is probably the most significant of the amendments we passed in 1982 for Ontario companies--I was only told of the one instance at the time, but one can guess there are others--if it is applied to all companies, is going to be a real brake on the transfer of shares. Then we will not get the McDougald estate or Argus Corp. Ltd. or whatever it was and then to Black and from Black--all the shilly-shallying that went on

about Crown Trust shares--out to Winnipeg to Asper, I guess, and then back to Rosenberg. That is a very destabilizing situation.

It certainly would not have been improper, in my view, if Mr. Cohen and Mr. Ellen had got control. It probably would have been a good thing. I still have a very open mind as to whether Mr. White was entitled to take all the defensive actions he did take to prevent the Royal Trust takeover. Certainly the Ontario Securities Commission had very grave concerns about some of the actions that were taken. I think some of them are still unresolved.

I do not think the committee is saying everything is black and white or everything is perfect. I just do not think this is the way to solve the problem. The combination of other things leads me to believe we should accept this recommendation.

Mr. Boudria: Mr. Chairman, we have referred to several exhibits in talking about this in the past, but there is one we have not talked about. While this is certainly not the Bible of everything that ever happened in trust companies, it is nevertheless an interesting document. I am talking about exhibit 17.

Mr. Chairman: Give us the cover sheet, so we know what we are talking about in exhibit 17. What is the name of the book and the author?

Mr. Boudria: Trust: The Greymac Affair, by Mr. Terrence Belford, exhibit 17. I want to read this for your interest.

"The lessons learned by the fiasco seem to point unerringly in a single direction: the need to change laws and regulations governing the ownership and regulation of trust companies. It is highly unlikely the Crown-Greymac-Seaway episode could have taken place if ownership of trust companies was prohibited to individuals or a group of related individuals or companies. The principle of tying a trust company's ability to raise borrowings to its equity base also appears to be a faulty mechanism because the regulations governing the calculation of that equity base are too ephemeral.

"The principle of allowing one-person control over vast deposit-taking powers and the disposition of those deposits is only as sound as the ability of that person to draw the fine line between rights as an investor and obligations as a trustee."

12:10 p.m.

I am not even sure myself when we come down to legislation about this issue. I cannot say right now I am personally for recommendation 4 as it stands. There are still too many unanswered questions about this whole thing. I recognize everything that has been said in the past by witnesses. Even if there were a 10 per cent rule, there would have to be some mechanisms to grandfather people in, as well as some exceptions, possibly, for some of the groups that own trust companies.

I am thinking, for instance, of one particular group that

was here, Co-operative Trust, which is co-operatively owned by an organization; they are all credit unions or something that own this co-operatively.

Mr. J. A. Taylor: Yes.

Mr. Boudria: That kind of thing, of course, would have to have some sort of exception; I recognize that. But notwithstanding those exceptions that a 10 per cent rule would have to have in some way, I still have some concerns about all this.

Mr. Chairman: But we have discussed this rather fully, and Mr. MacQuarrie made the case that minority shareholders can through different ways, and Mr. Renwick has pointed out how Royal Trust was able to deflect these things.

It is just a matter of the way you interpret it. Anybody who wants to do anything can find a way of doing it, whether he is the single owner or a minority owner.

Mr. Boudria: I recognize that, but that is saying anybody who can break the law can do it anyway, so why have laws at all. One can take that kind of analogy to ridiculous lengths if one wants to.

Mr. Chairman: But does this proposal not strengthen the registrar's hand? That is the question you want to ask yourself.

Mr. Breithaupt: This is a very difficult proposal for me because, as you know, I happen to be a director of a trust company that is substantially owned by two men who spend full-time working in this business, are very skilled and very experienced and have provided additional capital or other requirements, depending upon the needs.

I see Mr. Lahn's comment as chief executive officer of Canada Trust in a clipping which sets out that it is the last major Canadian trust company without a controlling shareholder, although, as I pointed out earlier from the same clipping, apparently Manufacturers Life Insurance Co. has a 20 per cent interest in Canada Trust.

Interjection: Controlling?

Mr. Breithaupt: No, but a substantial interest in it, just the same.

Presentations have been made to us on behalf of the trust companies association and, as I recall, one example commented upon by one of the persons who was before us was that the company for which he worked was wholly owned by one individual. Then you get to the stage of the kind of family involvement that Mr. Hal Jackman has whereby, because of a variety of developments, he has a substantial interest in two of the major companies.

You get something like Canada Trust pleased that they have as widely held shares as is possible--although, as Mr. Lahn points

out, there is a golden rule, and the golden rule is that whoever has the gold makes the rules. Therefore, if that is the case, I suppose that company too, by the judicious purchase of shares on the exchange, could find a substantial other minority interest, which would lead to members on the board of directors and whatever else might occur.

I just do not think there is anything magical in the simple ownership of the shares. We have such a variety, from the credit union involvement to a wholly owned, one-person-owned company and everything in between, that surely the regulations should be available and should apply equally and readily to everyone in the business, with the same tests, the same criteria and the same responsibilities.

Then if one person wishes to invest substantially in such a vehicle in our so-called free-enterprise economy, he is at liberty to do so; if, on the other hand, a company such as Canada Trust prides itself in the fact that it is very widely held, that is just fine. I do not see anything magical in any particular or peculiar limitation of interest in a company by the ownership of its common shares. I do not think anything will result one way or the other from that particular point being the focus of regulation. Surely the controls have to be applied to everyone equally and the fact of the ownership of the shares, to me, is not a major opportunity to avoid future difficulty.

Indeed, I would presume that the source of funds and the capital opportunities, should occasion require, from a company that is somewhat more closely held or has a major shareholder, may make it easier to weather a storm than the difficulty a widely held company might have in raising additional capital in times of very high interest rates or other difficulty. I just do not see anything that you can hang your hat on as far as the simple ownership of shares.

Mr. Chairman: Are there any further comments on D-4?

Mr. J. A. Taylor: The consensus would seem to be to go along with the white paper.

Mr. Renwick: Mr. Chairman, I have no discussion specifically on D-4, but I would think at some point we might, without straying too far from our mandate, look at the 25 per cent foreign ownership provision to see whether or not we should consider dropping it on the foreign ownership to the 10 per cent as with the banks, because 25 per cent is a significant control element.

The other matter is that certainly I think we should, when we get to the directors' part of it, look carefully at that question of public interest directors as a possible recommendation we might make.

Mr. Crosbie: Mr. Chairman, I am just mentioning that the Royal Trust paper on page D-5 has an interesting approach. It is not exactly the public interest shareholder, but sort of in effect a 75 per cent limit on single ownership which would presumably

give 25 per cent of the shares to people who would represent the public or would be public shareholders. I do not know whether the committee cares to review or comment on that, but it was one of the other approaches that was suggested.

Mr. Chairman: Are there any comments on that specific point? If not, we should move on to recommendation D5 which states the following:

"The possibility of a majority shareholder putting personal interests ahead of fiduciary responsibilities can probably be more effectively dealt with by specific conflict of interest amendments rather than by absolute limitations of ownership."

The comment should be made that no briefs addressed this recommendation.

Mr. Boudria: I think the recommendation is there, though. Every brief that addressed the other one has also addressed this one conversely.

Mr. Breithaupt: This is really the other side of the coin. You will recall it was referred to as we attempted to look at the materiality and the connections both up to a holding company or down to a subsidiary that the deputy minister had referred to earlier on. One of the powers the registrar wanted, as I recall, was the opportunity to have some declaration made on a positive basis of the financial connections back up to a common point. That would be somewhat more clearly spelled out so that there would be a positive requirement to announce materiality when it was appropriate.

12:20 p.m.

I think something like that follows in this kind of recommendation where conflict of interest, materiality or however you might define the linkage, is spelled out when it is appropriate, and the onus is upon the parties involved to say in advance and not on the registrar to have to dig it out. I think that in itself sets a tone in the operation by which most of the responsible people running the companies would abide.

Mr. Renwick: I do not want to juxtapose conflict of interest rules as the answer to the single or the majority shareholder. I think that is equally simplistic. Drawing up effective conflict of interest guidelines, as everybody knows, whether in public life or any other kind of life, is probably one of the most difficult operations there is, and we do not have the magic to do it here.

It seems to me our comment on this is it can probably be more effectively dealt with by a range of amendments. If you want to specify, these would include conflict of interest rules, but I am looking at the solution to our problem as a series of the amendments we have been talking about. I do not want somebody to say to me, "How can you devise conflict of interest rules that will deal with the majority shareholder situation?"

That cannot be done, and I do not care how you try to do it or how honourable the people are. We are going to be talking about standards of conduct for directors and at least canvassing the idea of public interest directors. It may well be that when we get to conflict of interest we are simply going to have to say the lawyer who is the professional adviser on retainer to a trust company shall be excluded from the board of directors of the trust company.

We may have to deal with a number of items, including the registrar on the transfer of shares. This will be a trap if we come down in favour of the other recommendation not to limit the ownership of shares. This would simply be an argumentative trap we would fall into to limit it simply to conflict of interest and juxtapose that against majority shareholder interest.

Mr. MacQuarrie: Mr. Chairman, I certainly agree with Mr. Renwick on that. We are dealing not specifically with conflict of interest, but with a whole series of controls that would serve essentially to protect investors and govern the companies. We should not allow ourselves to be tied down by a statement which can probably be more effectively dealt with by specific conflict of interest amendments rather than by absolute limitations of ownership. As Mr. Renwick has said, and I agree with him wholeheartedly, it puts it in conflict with the ownership question that we dealt with just--

Mr. Crosbie: Mr. Chairman, I would comment that this is probably another of these cases where the summary does not do justice to the report. I am thinking of page 26 of the report under the heading of conflicts of interest. The point is made:

"As stated earlier, the most effective preventative is self-policing, sound and prudent business practices, and the recognition of their responsibilities by directors, managers, lawyers, auditors and valuers. A multifaceted approach is proposed to encourage all corporations, etc." I think we have recognized the principles.

Mr. Renwick: I agree that you have. I was thinking if we were--

Mr. Breithaupt: It may well be that this item and number 6 in combination could be dealt with by repeating the phraseology the deputy minister used in observing upon the difficulty of dealing with that theme by particular rules imposed by the registrar.

Mr. Chairman: So items 5 and 6 would be more or less covered by the phraseology of the deputy. Agreed?

That brings us to the conclusion of the ownership section. I think it would be a good time to pause until two o'clock this afternoon.

The committee recessed at 12:25 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO

WEDNESDAY, FEBRUARY 29, 1984

Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Boudria, D. (Prescott-Russell L)
Breithaupt, J. R. (Kitchener L)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Grande, T. (Oakwood NDP)
Kerrio, V. G. (Niagara Falls L)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitutions:

Van Horne, R. G. (London North L) for Mr. Kerrio
Williams, J. R. (Oriole PC) for Mr. Stevenson

Clerk: Arnott, D.

Staff: Mooney, P., Researcher, Legislative Library
Nigro, A., Researcher, Legislative Library

From the Ministry of Consumer and Commercial Relations:

Crosbie, D. A., Deputy Minister
Thompson, M. A., Superintendent of Insurance and Registrar of
Loan and Trust Corporations, Financial Institutions Division

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, February 29, 1984

The committee resumed at 2:12 p.m. in committee room 1.

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO
(continued)

Mr. Chairman: We will be dealing with the section regarding conflicts of interest on page E-1, item 1. It states: "To prevent a recurrence of recently discovered abuses, a multi-faceted approach is proposed involving not only a more active and stringent regulatory process, but also increased self-policing, sound and more prudent business practices and an increased awareness of their respective responsibilities by directors, managers, lawyers, auditors, valuers and other advisers." I believe we have one exhibit, number 39, from the Canadian ASA Society of Appraisers.

Mr. Breithaupt: Perhaps we can hear from our officials regarding this multi-faceted approach. Clearly, the matter of valuers' involvement has been brought to us. What are you expecting to get out of this principle? What sort of balance are you interested in striking?

Mr. Crosbie: The discussion we had before we broke for lunch touched very closely on the principles we are trying to get at here; that is, the type of activity we are trying to regulate will not be successful if it is solely dependent on the regulators. It has to create a sense of responsibility among the owners. It has to involve the professionals who advise these companies--the lawyers, the auditors and the appraisers.

Mr. Breithaupt: And the duties of directors?

Mr. Crosbie: And directors, yes.

There are a large number of people who interact with trust companies, all of whom have a capacity to make the system work better or worse, depending on what responsibility they take. One of the thrusts of the white paper is to try to create incentives--the incentive might be to avoid a disincentive or a penalty--for people to be responsible.

Mr. Breithaupt: You are no doubt going to be involved with the accountants, lawyers and a variety of other groups to encourage the more precise statement of their policies of independence and responsibility. When reading through the trust book written by Terence Belford, I seem to be struck with the all-too-human condition that a lawyer or an accountant who had never had as active a client before was prepared to do the work that was directed without raising the burden of professional

responsibilities or questions in an otherwise difficult economic time when the replacement of that client by several others was not as readily a prospect.

I can see that you are going to be involved in that kind of circumstance, but as our colleague the member for Riverdale (Mr. Renwick) mentioned in his disappointment as to the response of the Law Society of Upper Canada in its desire or its willingness to be involved in these circumstances at this point, you seem to have a long way to go.

Professional responsibility from a self-governing point of view that more and more groups want to have now, beyond the traditional ones of law, medicine and accounting, is going to bring, I feel, the prod of government involvement if the codes of ethics are not more particularly adhered to by members or some penalties imposed upon those who do not in the general view attend to their professional responsibilities as strictly or as prudently as others think they should.

This is where the future of this whole self-governance idea, whether it is the land surveyors, the nurses or whoever brings forward their bill of particulars as to what they would like to carve out in their own practice and responsibility, is going to see an ongoing involvement of government because self-governance is not going to be allowed to exist in that vacuum without the overview of the Legislature as to whether it is being properly and thoroughly applied.

I think we are in for a number of years of more particular examples that are going to be almost required of the professional groups to make sure their houses are in order, with the prospect that if they are not, certain terms and conditions are going to be imposed. I feel you are taking on quite a task to set that scene.

Mr. Crosbie: I realize the limitations on this approach and obviously it requires at least two things. One is the full co-operation of the professional bodies and the other is the ability to reach agreement on what additional types of conduct can be prohibited or which could be used for disciplinary purposes.

2:20 p.m.

I hope the letter from the law society is not indicative of a reluctance to co-operate in reviewing the matter but perhaps a reluctance to publicly wash linen and that we will get its co-operation. A very simple example is the trust funds where a lawyer is prepared to turn over the secrecy of his trust fund to a client without knowing what is being processed through the fund. There could be some very simple ethic which says a lawyer cannot do that; a lawyer must be accountable or has to understand or limit the use of his trust funds in some proper way.

Mr. Breithaupt: I understand there may well be some reluctance on the part of the governing authorities within the law society to comment in advance of changes of responsibility, but that kind of theme is surely one which the public may well take an

interest in addressing, and in the absence of doing so, provide some direction that it be attended to, self-governance and all aside.

Mr. Crosbie: I certainly do not suggest that representatives of the law society should not have been here. I am just hoping that the fact they did not show up is not going to stop us from dealing with them and raising the issues which perhaps might more fruitfully have been raised here.

Mr. Breithaupt: I certainly hope that is the case as well.

Mr. Crosbie: I think a number of the other societies, such as the Institute of Chartered Accountants of Ontario in its brief and in discussions with the minister, have been most willing to co-operate. I think we see that in a number of other associations, although in the appraisal area we have an obvious difficulty because they are not a self-governing body--at least they have no statutory authority--and the most they can do is limit ownership in their own association, which does not preclude the individual from carrying on his business. There are a number of areas where relying on professional groups has limitations.

Mr. Mitchell: Mr. Crosbie, I would like to look at this particular section, which reads, "an increased awareness of their respective responsibilities by directors, managers" and so on. I have not gone through the act page by page, but having looked at the index and the areas which refer to directors and the responsibilities of directors, I am somewhat puzzled.

As I understand it, and perhaps I am misinterpreting it, you are proposing to say to these people, "Here are your responsibilities; here is what you are expected to do." Are we actually saying they should be more involved in the day-to-day monitoring of their corporations, what the penalties are and so on?

I can say: "Read the act. Those are your responsibilities and you better be aware of them." But I expect you are thinking of more than that. There are so many areas in this act which cover what a director should do and should not do, authorizing investments, so many things. It is all there. What else are you going to do with these directors? The word "awareness" does not mean much to me. If they are directors they should know every last little bit in that book.

Mr. Crosbie: I agree that is certainly a wise position for them to be in, but it would not surprise me if a great many directors are not. I think it is also true that a great many lawyers, auditors and valuers may not be as familiar with their own code of ethics as they should be.

How do we go about increasing that awareness? We could work in conjunction with the law society's communique program in which information is circulated to the profession. Perhaps we could work out some sort of program with them in which they would draw particular attention to aspects of ethics. We could do the same with the auditors and other professional associations which have publications.

Mr. Mitchell: It appears to me, and I could be wrong, that you really feel the responsibilities of directors are very well detailed within the act.

Mr. Crosbie: We think there is room for additional responsibilities. The duties of directors recommended in the 1975 report are ones we want to spell out more specifically.

Mr. Mitchell: That is what I was trying to get at.

Mr. Crosbie: There are a number of areas like that, but we think we can enhance or more clearly establish what the responsibilities are.

Mr. Mitchell: Are the penalties, if any, in the act sufficient enough?

Mr. Crosbie: I believe there is the concept in paragraph 3, saying the act should be amended to make external advisers, etc., accountable. That means legally accountable if they knowingly participate in a breach of conflict. To the extent there is any doubt about the consequences of a breach of duty, which results in a loss to the company or to depositors, we wish to clarify that.

Mr. Mitchell: Okay. Perhaps my lack of legal knowledge is going to show, but if a director is not carrying out his duties in accordance with the act, there should be some methodology someone can use that would bring him into line, other than the situation you are referring to, i.e., by legal action, because that can drag on forever and a day.

Mr. Crosbie: Under most circumstances, if you drew to a director's attention the fact that a corporation was doing something irregular and if it continued to do it, there might be a loss and he might be personally liable, I think that knowledge in itself for most directors would bring them into line.

Mr. Mitchell: I am not suggesting for a moment I have any feeling that the directors in most cases have not been doing what is expected of them.

Mr. Crosbie: I think that is probably true. The fact that we have enjoyed such a long period with relatively few problems is a reflection that most companies are reasonably well run, and do not get themselves into these difficulties.

Mr. Mitchell: I would tend to share that feeling and, I guess even more, the wording of that particular statement on increased awareness. Mind you, with your comments about the other report and some recommendations there, perhaps we should be looking at that in conjunction with those, just to get some idea of the direction you propose to go. As I say, it is the words "increased awareness" that give me some question. How do you do it? If they become members of a board of directors, is someone going to say to them: "Here, read this. This is what you are responsible for."

Mr. Crosbie: I could give you another approach we are looking at. The Trust Companies Association of Canada has an educational institute that provides training courses for people in the industry. One of the areas we have had some preliminary discussions with--

Mr. Mitchell: Is that a requirement?

Mr. Crosbie: Once we have the white paper and perhaps the legislation, at some point we could get together with them and assist them in setting up some course of study or review for people in the industry who could be brought up to date on all the new requirements of the legislation.

Mr. Mitchell: I have monopolized enough time. Thank you, Mr. Chairman.

Mr. Renwick: Mr. Chairman, I would like to limit my comments to the lawyers, auditors, valuers and other advisers because we will be dealing with the directors and officers in another section. I take this recommendation basically to refer to the last three or four lines.

2:30 p.m.

We are going to have to use a combination of things in that framework. I think we have to make a strong recommendation that we expect the professional societies, that is, the Institute of Chartered Accountants of Ontario and the Law Society of Upper Canada, to make changes in their codes of ethics to deal with these questions. I think it is going to be quite inadequate. If they are proposing to make no changes, then we need very explicit explanations as to why no changes are necessary in the light of the complexity of the Morrison report. Otherwise, we are likely to get--and I say this with great respect to both professions--a sense that it is the bad apples, and you cannot have codes of ethics that apply to bad apples. You get locked into that kind of a game.

They are going to have to impose much stricter requirements on their members with respect to their professional obligations, including, particularly, the sense of distance from their clients. That is extremely important. It is also extremely difficult. I think any lawyer in the room has trouble, on occasion, saying: "Look here. Joe and I are great friends, but I have a professional responsibility."

It is difficult to do and I do not think any lawyer is as pure as the driven snow in situations, particularly in complex business transactions. Somehow or other we have to make that kind of a statement. I limited it to the two professions because they are the only two which have a statutory responsibility with respect to the discipline of their members. We should make it very clear that we are inviting a positive response from the professions on those particular points. Failing that, a committee of the Legislature is going to have to deal with the matters related to these problems.

I say a committee of the Legislature because we do not have any mandate to deal with that question other than the white paper mandate. We have the white paper mandate and that does not necessarily mean our mandate is dead when we report our comments on it. The bill will be coming through again. I cannot conceive that the bill will not come back out to a committee again.

We have to emphasize that as much as they do not want to they are going to have to take a very cold, hard objective look at it. They cannot always think that somehow or other public discussion is a disadvantage on these sorts of matters. I do not believe it is a disadvantage. We need their assistance so we can do the legislative work necessary to provide for this reference to accountability.

It is extremely difficult--or I would think it is--to devise an accountability provision in the sense of legal liability. These two professions have skilled and knowledgeable people. They should not be saying, "We will be happy to see the legislation and comment on it when it comes through." We need a positive response from those two professions and from--to the extent they are able to do it co-operatively--those who represent the appraisers, recognizing always that they do not have a statutory responsibility.

I would like to put on the table the proposition that--I am not trying to analogize to the auditors-- a professional adviser who is a lawyer on retainer to a trust corporation should not be allowed to sit on the board of directors nor should he be a shareholder. I note there is a fiction--not a fiction, it has some real substance in fact--that auditors are for the shareholders of the books of the company, but they are paid by management and we are expecting them to have a role with them.

I am trying to draw the analogy to a lawyer, that he is the lawyer for the shareholders and so on. I do not want to force it to that, but I think very positive consideration should be given to providing that a lawyer on retainer to a trust corporation be excluded from being a shareholder or a director of the corporation. I am talking, of course, about outside lawyers who are being retained.

I think we are going to have to go in a limited way to some carefully devised and expressed compliance certificates. It is not an unknown concept in the world of financing. People can be cynical about it and say, "It is not a question of just getting the pieces of paper right. There is more to it than that." Of course, there is more to it than that, but compliance certificates are in common use by corporations that have outstanding trust deeds, bonds and so on of various kinds.

I do not see any reason why the registrar should not be entitled to receive a limited number of carefully prepared compliance certificates on a regular basis from companies and have the additional power to call for a compliance certificate at a particular point if he has a really serious question about something.

We are also going to have to think very carefully about having a valuator's or an appraiser's form of certificate, a standard form. You do not have to call it a certificate. You can call it a report or whatever you want, but the auditors have basically a standard form of report. If they have to qualify it, the first thing you look for is the qualification. If all the words are there, you are entitled to make certain assumptions. If it turns out not to be correct, then the onus is on the auditors to explain why they have not qualified their certificate in that regard.

I believe those are the major comments I would want to make about lawyers, auditors, valuers and other advisers.

It may be that one should exclude from the board of directors a person who is on retainer for valuation purposes or is going to receive a fee for performance of that service. I would much rather go that route than exclude registered mortgage brokers en masse from it, or exclude any particular group.

There are four or five specific things like that which can be used to bolster or reinforce the standard of conduct which we expect from people in these circumstances. I have no real sense about how to handle the liability question, how to make lawyers, auditors and valuers accountable in the strict sense of the term without getting all hung up on the question of knowledge, intention and all of the rest of the things which properly fall under the Criminal Code.

2:40 p.m.

Fraud or misrepresentation--all of those sort of things--are extremely difficult ever to put together after the event in the sense of enforcing liability and you always have the question of who is going to bring the lawsuit. Who is in a position to bring the kind of lawsuit that Mr. Ellen or Mr. Cohen brought against the Canadian Imperial Bank of Commerce for alleged default in its bank-customer relationship? Very few people can initiate the process.

As to Mr. Boudria's question, I do not know to what extent the penalties in the act are affected. Most of them have never been enforced. I do not think anybody fully understands the possible implications, even though it is traditional to have these penalties.

Mr. Chairman: Does the ministry have any comments? If not, we will move on to Mr. Boudria.

Mr. Boudria: Are we going to ask that all future evaluations or appraisals of property be undertaken by appraisers who are members of some institute? I understand this has never been a requirement in the past. We are told by the organization that represents them that you cannot stop anybody from making an appraisal. An appraisal is an opinion and you will always have consultants offering opinions.

As regulators, we can still state that we will not accept an appraisal or an evaluation by someone who is not a member of at least one of the organizations. This will satisfy our own worries about whether or not the appraiser's qualifications are adequate. It may not necessarily mean that the evaluation will be done properly; however, it does offer at least one additional form of protection.

Referring to page 80 of Mr. Belford's book, the same book Mr. Breithaupt mentioned earlier, concerning an appraisal in London, I quote: "On March 15, Barry Lebow, an appraiser and son of Rosenberg's friend Sid Lebow, offered a preliminary report that the building"--and we are talking about the building here known as the London Armouries--"would be worth \$7.5 million if the hotel Player planned to build and lease on the site, Today's Inn, was in place and the resulting cash was treated as an annuity. In other words, if Player completed the hotel, restaurant and shopping centre on the armouries' site, and if the rents generated were spread over 10 years, then that revenue would be the equivalent of the interest on \$7.5 million. This appraisal was an unusual exercise in foresight," so the author says.

He has other, more colourful words elsewhere in the book. I do not know whether this gentleman is qualified and whether you or anybody else would accept his qualifications as being bona fide.

The other thing is, since this person was very close to the son of another Mr. Lebow, who, I understand, had many dealings with Mr. Rosenberg, I wonder what constitutes arm's length doing this kind of thing. There are many aspects of this that need looking at, other than just saying there will be more stringent regulatory processes.

Mr. Crosbie: I think there are some difficulties in requiring that an appraisal be carried out only by an appraiser affiliated with one of the associations without some legislative authority requiring that affiliation. At present, you might have a very good appraiser who does not belong to any of them. Why should he be compelled to join an association?

Mr. Boudria: What about qualifications in other regards?

Mr. Crosbie: They have their own qualifications. They have certain exams that have to be written, but that is no guarantee that the people doing the work are qualified to do it. They can qualify to a certain extent, but as we heard from some of the appraisers who were here, you may very easily get in over your head on a type of appraisal where you perhaps do not have the experience to judge a very complex physical situation.

We really did not undertake in the white paper to set up a regime to legislate or create professionalism in the appraisal area. Quite frankly, I did not see that as a responsibility under the white paper, so obviously we did not do it.

There is the other aspect, too, that a great many appraisals are conducted by in-house appraisers who may have been hired and

trained by a trust company and might be quite competent to do the type of appraisal the trust company wants and is quite adequate for the type of business they are doing. I do not see any purpose in requiring those people to become members of an association for some other purpose.

Mr. Boudria: What about a dollar limit for in-house appraisals? Has that kind of thing ever been contemplated or looked at? In-house appraisals below a certain amount are okay, but you must get full arm's-length appraisals if they are in excess of that amount, or perhaps a multistep affair.

Mr. Breithaupt: There has to be some corporate responsibility in hiring people to do a variety of jobs. That is the responsibility of management.

Mr. Crosbie: You could say the same thing about a legal opinion. If it gets to a certain level of difficulty, must they get a second opinion from another firm or can they continue to rely on the in-house lawyer? You run into that.

Mr. Chairman: And then a third one will come along.

Mr. Breithaupt: It is difficult.

Mr. Chairman: Are you suggesting that a person who is a qualified appraiser would be denied the opportunity to make a living by excluding him?

Mr. Boudria: Not necessarily. Let me put it another way. It is interesting to note, for instance, that you cannot get a haircut in this province without going to somebody who has the qualifications to do that. You must go to school for a specific amount of time and have a certificate to give somebody a haircut.

Mr. J. A. Taylor: Why not get your wife to cut your hair?

Mr. Boudria: Providing she does not charge for it, yes.

Mr. Breithaupt: It would appear from my colleague's look that he has obtained an exception to this.

Mr. Boudria: I am getting to a point where I may not require a haircut very much longer, so I can talk that way about barbers and I do not have much concern because I will not require them for very long.

The whole point is that it is not unusual to have certain professions have a specific qualification before they are allowed to do business in this province. Lawyers are subject to that. You were using the parallel of lawyers. Lawyers must have certain qualifications. Why do we not see, for instance, that appraisals, especially once they get beyond certain amounts--

Mr. Hodgson: Appraisers do require qualifications before they can do legal appraising. Appraisers do have to go to school. They must take a written exam, do they not?

Mr. Crosbie: No. Only if you want to join an association.

Mr. Hodgson: If you want to join an association or do business for any reliable firm.

Mr. Crosbie: From a practical point of view. There is no legal requirement.

Mr. Hodgson: Any appraisers I know in my area all have their certificates.

Mr. Crosbie: Most of them do. I am just saying that from a legal point of view--

Mr. Breithaupt: If somebody wished to use your particular experience in the valuation of a farm property or whatever in your area, why should that corporation be denied the right to hire you if it so chooses--

Mr. Chairman: That is right.

Mr. Breithaupt: --because of its belief in your knowledge, whether you happen to have a certain paper or not?

2:50 p.m.

Mr. Hodgson: At the same time, suppose we go into court and hear that Bill Hodgson is not qualified to be an appraiser, that his appraisal is not going to stand up in court.

It is just an opinion when they give me something or when they ask me for my opinion, not for an appraisal.

Mr. Breithaupt: Yes, but sometimes too much is based upon a piece of paper that does not necessarily make the person any better or more qualified to do the job.

Mr. Hodgson: They could ask my opinion about the little bit I know about law. They could ask my opinion, but if you go to court, you have to have a lawyer. There is no profession where you cannot ask somebody's opinion.

Mr. Breithaupt: Sometimes we hedge these things in too much, I feel.

Mr. Crosbie: I could cite an example of my experience in government some years ago when they were widening Highway 427 and acquiring over 100 homes, all of a similar character.

The government did not go out and get a full-blown appraisal on each home. They got three reputable realtors who were active in that market, and they gave what was in effect a letter of opinion about each home. If the three all came within a reasonable amount, they accepted that figure. If there was a significant disparity amongst them, they got them to get together to try to work it out or find out why they were so widely different. None of them was really doing an appraisal in the sense of the standard appraisal you think of going to court with.

Mr. Breithaupt: But that was suitable for the purpose.

Mr. Chairman: Market value conditions at the time.

Mr. Crosbie: Exactly. That is what we were saying earlier about the trust companies. If they are working in a certain market, they might have mortgage officers or appraisal officers on their staff who are quite competent to go out in that market and give them a value for the purposes of the lending they want to do, and they would be close enough to the value so nobody would really be concerned.

Mr. Gillies: Just as an aside, is it not the case that you have to be qualified, you have to have a certain qualification to be an appraiser or a land economist, I think they call it, in Great Britain?

Mr. Crosbie: Only if you want to join such an association.

Mr. Gillies: So it is not mandatory there either?

Mr. Boudria: No, not at all.

Mr. Hodgson: My beef with appraising is, let us say Mr. Jones buys a house and gets a mortgage through a certain financial firm, whether it is a trust company or a bank. Three months or six months down the road, he resells the house and I want the mortgage and I buy the house. That house has to be appraised all over again at a cost of so many dollars.

Mr. Breithaupt: If you choose to increase the mortgage.

Mr. Hodgson: No. Just a new mortgage on the same home.

Mr. Breithaupt: I see, yes.

Mr. Hodgson: That is so prevalent now in fast developing areas.

Interjections.

Mr. Hodgson: If you want to decrease the mortgage too, you must have an appraiser.

Mr. Chairman: We will get back to Mr. Boudria now.

Mr. Boudria: That is very interesting, except it is not really what we are concerned about. I know appraisals are done by various people. As I said previously in front of this committee, I have people in my own family giving opinions on properties. Both my wife and my mother are real estate salesmen. They are salesmen under the act, by the way, not yet salespersons until we revise the act, which I hope will be soon. Nevertheless, as real estate salesmen, they do this kind of thing. It is called comparative market value analysis. It is not really called an appraisal, but it is used for various purposes by individuals.

However, those appraisals are not used as a guarantee of value which may affect depositors' money. This is a different thing we are talking about here. Somebody wants to know the value of a property, as the government did when they wanted to know what the properties in an area were worth so they could go out and buy them to construct an expressway. That is a very important concern to people owning the homes. Presumably, they come up with a value and that may be agreeable to everyone, but these appraisals here are to be matched with depositors' dollars. It is depositors' dollars that are going against that. It is the trust relationship we are talking about, not just purchasing a property. Does that not make a difference?

Mr. Crosbie: I do not really think so in all cases. If you have a difficult property, one with a limited market, the person who appraises it must have greater skills. You may want a person with a maximum amount of skills.

If you have a subdivision of homes in the \$100,000 to \$125,000 range, with five models and 100 homes, do you need a separate appraisal of every home if you are putting the mortgages out?

Mr. Boudria: No, of course not.

Mr. Crosbie: All I am saying is that circumstances are going to dictate.

Mr. Boudria: You would not need an independent appraiser in any case.

Mr. Crosbie: No, if you are selling it.

Mr. Hodgson: If you get the mortgage from the trust company or the loan company or the bank, you have to have an individual appraisal of every home.

Mr. Crosbie: That is another aspect. Various companies have various charges. If they want to make a charge for their appraisal, I suppose that is an option.

Mr. Boudria: That type of thing could be done by in-house appraisals. It could be dispensed with altogether if the homes happen to be relatively similar. I am not sure, but that is not really the issue.

We are relating all of this to incidents that have happened. We are talking about the Cadillac Fairview apartments, for instance, which Strung Real Estate Ltd. says were worth \$475 million or something. The gentleman who came in front of this committee said they were worth \$329 million at first. Then he changed his mind and they were worth \$330 million. Those are vast differences and very large amounts. They are really the reasons why we are here now.

Had those buildings been worth \$600 million, for instance, in everybody's minds, none of us would be in front of this committee today. We are here today because nobody was sure about the value of those buildings. Is that not why we are here?

Mr. Crosbie: I suppose it is a factor.

Mr. Boudria: A large one.

Mr. Chairman: Is there anything further on item 1? If not, we will move on to item 2.

The second item: "Internal review procedures of registered corporations should be strengthened and tightened." That is page E-2. Are there any comments by any members of the committee?

Mr. Renwick: Basically, I thought the comments we received on that had a reasonable amount to do with what the Institute of Chartered Accountants of Ontario had to say about internal controls and management controls. Were those the terms they used?

As I understand it, we are talking about the kinds of internal controls that provide a check on the processes used to make decisions on investments of one kind or another. If I am correct in my assumption of what that means, then we have to be concerned about two things.

One is that the auditors of the Institute of Chartered Accountants drew a very clear line between their responsibilities and the availability, or otherwise, of internal controls or management controls. The second aspect of that is it is not a hell of a lot of use for us to say they should be strengthened and tightened unless we can in some way say how.

3 p.m.

I still think auditing firms, accounting firms or management consultant firms, which are mainly auditor-based in many ways, can advise with respect to management controls and internal controls. If you consulted them, for a fee they would tell you what you should develop within your organization on these matters. I think that has to be explored and they have to be invited to do that. As well, the appraisers and the lawyers have to be invited to make submissions with respect to the kind of internal controls that should be made. You should also consult the honorary pallbearers you people brought in to bury the companies, Mr. Bell and the others.

Mr. J. A. Taylor: They carried the coffin. They did not bury the companies.

Mr. Renwick: It seems to me the ministry had emergency advice from very important people in the community. You have now been in touch with all of the major accounting firms and consultant firms. There are a lot of major legal advisers who are the cream of the crop. Surely it is not beyond your capacity to call upon them to tell you the kinds of internal controls and management controls trust companies should have with respect to their decision-making responsibilities through to the board of directors with respect to their investments and with respect to compliance with the Loan and Trust Corporations Act and with

respect to questions related to disclosure of conflicts of interest and that kind of thing.

I do not think we have the capacity to answer those questions, but I certainly think that vast array of talent you have called upon could be asked to provide you with their guidance at minimal expense to the public. They should be asked to prepare and submit this, however you want to do it, and get their views before us.

I do not know whether they can be translated into legislated form or not. I do not know that. Maybe they are not. In the initial instance, maybe they are only capable of being done in terms of guidelines. Perhaps ultimately down the road we will be able to draft regulations or to amend a statute to comply with them. When I look at the people you consulted when faced with these problems, it must not be a difficult job if people would do it.

Mr. Crosbie: I would add one other group to the list you have mentioned. I think you could go to a number of the existing trust companies that are reputable. In fact, we have obtained the manual from one of them. We got it with the purpose of having it available for the committee. If you look at this and go over what they have stipulated, that might be improved upon or modified so you might come up with some sort of standard form or minimum form, if you will, that spells out approval processes within a company. You could require the trust companies to have a comparable document.

Mr. Renwick: I do not believe it would be out of line to say a comment on this recommendation of the white paper should be requisitioned or obtained, however you want to do it. At the time the legislation is being considered by the assembly, a statement with respect to these matters should be tabled with the committee so we can have the benefit of their advice and where down the road it develops.

Does it become guideline? Does it become regulations? Is some part of it possible to put into regulation form?

I really thought it was basically only that Institute of Chartered Accountants' paper that touched upon that crucial question. They also raised the curtain between their responsibility and management responsibility. I think we would find the same thing if we pressed hard with appraisers and their responsibility and if we pressed hard with lawyers and their responsibility. Somewhere they would say their responsibility ends and somebody else picks it up.

I do not think it is a big job. I do not mean it does not take a lot of skill and background knowledge and so on to do it, but I would think a half a dozen of your advisers, if they were asked to sit down for three or four days together to do it, could give you a pretty good inkling to add to the knowledge that you already have about what you think adequate internal controls and managerial controls should be in the business, right up to the board of directors.

The problem with sitting on the board of directors is that unless you have clear knowledge in front of you that there are managerial and internal controls, if you are sitting at a meeting having to decide something, you can simply ask as a matter of routine, "Have the internal controls and procedures been complied with?" If the general manager says, "Yes, they have," we can inquire or otherwise.

The institute has done a lot of work on the accounting principles. It should not be hard to develop a kind of standard, basic manual of internal controls and administration. Otherwise, you cannot, by a form of words, put a further obligation, which I hope we will, on the directors for responsibility unless they have the tools to be able to do it.

Mr. J. A. Taylor: Are there any procedures in place now? Is this something new? You are talking about internal procedures and the requirement to define and establish a review and approval procedure to the satisfaction of the registrar. What is done now? Is there something in place now?

Mr. Thompson: There is an analysis done, but there are problems in that there is no real ability to enforce or set a standard for it. This is part of the whole white paper in the sense that if we came in with a standard for directors and if we have an investment committee that we are talking about later on, with outside directors reviewing investments, this is all part of the process we could follow through on. The problem is it is so difficult to define what a good operating procedure is because so much depends on the strength of the individual directors or the management.

There has been discussion here about appraisers who may be part of this process. Many of the companies that have been around for years have developed their own appraisers. These are people who have been taken in at a very young age and trained through the whole process. They have developed and participated in the creation of a mortgage manual which is to define the type of mortgages that the institution wishes to invest in. All the checks and balances are there and this is sort of an ongoing process.

3:10 p.m.

There has been no complaint about these people that I am aware of in any of the process. Indeed, their whole career depends on their ability to make that appraisal in accordance with the company policy as approved by the directors. It is one of those things that is easy enough to describe where it should be, but in practice it is very difficult to say whether it is good or bad because so much depends on the will and desire of the individual.

Mr. J. A. Taylor: I appreciate the differences in companies in terms of their size, where the emphasis on business might be and so on. I was just trying to determine the type of control you want. Presumably, all companies have some type of review process. Are you looking for a minimum standard? Are you looking for the lodging with the registrar, a manual which might

vary depending on the company involved? I am just trying to understand what you are looking for, what type of approval would have to be sought. How do you access this procedure? What are the benchmarks? What criteria do you use? Are they tailor made to the particular corporation? What process do you go through to determine whether or not it is satisfactory to you as a registrar?

Mr. Thompson: The thrust of the recommendation is merely to ensure that there are approval levels, checks and balances and proper operating procedures and manuals within the system. The only real test will be time and the company's results. But at least you will be able to say: "All right, there is an investment committee in place that is reviewing the mortgages. There is a standard for appraisals set in this organization." This gives you a yardstick to measure individual applications against.

I am not suggesting that the registrar would be saying this is good management practice. It should simply be there as a way to check to ensure that all the procedures are in place.

Mr. Crosbie: If you had a system of this kind, it could be tied into some sort of compliance certificate as part of the company's annual or quarterly report certifying that all its lending practices are in compliance with the approved process.

In our technical standards area we have what is called a quality assurance program, where the owner of the plant comes forward and says: "I have engineers and here is the inspection program I am going to put in place. If we do this, will it be satisfactory?" Our people say, "Fine." All we do is audit the compliance with the program. We do not go in and do the inspection to the equipment because we are satisfied that management is accepting its responsibilities and has set up a maintenance and inspection program that meets reasonable standards.

You could do the same sort of thing. You get a quality assurance from the trust company that it has a system of checks and balances in the loan approval, appraisal and audit process, or maybe the auditors can include some test to determine whether or not the company is complying with these sort of norms. It is another method of pushing the responsibility on to the people who should exercise it, while at the same time providing some sort of record that you are confident the company is meeting its responsibilities.

Mr. J. A. Taylor: Assuming there are procedures in place among all companies--I do not know if they are adequate in terms of your standards, but let us assume they are--are you saying at present you have no influence or control over those procedures, but the white paper seeks to vest the registrar with further power so that he can mandate changes and submit procedures for approval? I am trying to get at what we are trying to accomplish.

Mr. Crosbie: For example, to use a hypothetical case, one of the problems we have talked about is the power of a single owner to influence the conduct of his employees. If it is mandated or required under the act that there be an approved process for

approving mortgage advances and the board of directors is required to approve all loans over a given value, then the financial officers in the company would have some difficulty advancing that money on the loan if, in fact, it had not been approved in accordance with the procedures. They would be knowingly involving themselves in a process contrary to the act. It would be more difficult for an owner to come in and say, "I know none of the directors has seen this, but I want you to give \$5 million to Joe Blow."

Mr. J. A. Taylor: I understand all that. What I have been trying to get at is what you have in place at the moment.

Mr. Crosbie: Literally nothing.

Mr. J. A. Taylor: How do you want to improve it? The companies have these things in place. How do you want to plug into what exists now among the companies and what powers do you require?

Mr. Crosbie: For example, the present act under section 68 says, "Directors shall not declare or pay any dividend or bonus when the corporation is insolvent." There is a specific rule that governs their conduct. There are very few of those in the act.

Mr. J. A. Taylor: That is a general rule in the Corporations Act.

Mr. Crosbie: Granted, but you could have similar rules that say you must have other things in place. We do not have them under the present legislation. The failure of a director to participate in a decision, or the failure of the owner to have any of his directors participate in a major decision that may be contrary to the act, is not now prohibited because there is no requirement to have these mechanisms in place.

We are saying that one of the ways to make directors and other officers of a corporation more responsible is to clearly spell out what processes must be followed. The failure to follow the process then involves them in an irregularity.

Mr. J. A. Taylor: What I am saying is that assuming well-run loan and trust firms want to ensure responsibility and accountability amongst the various officers of the company and staff, they have certain procedures in place now. Let us accept all that. What I am trying to arrive at is what role the registrar will play in regard to that. A policeman's role? Another authority to which a manual must be presented outlining those internal procedures? What? Are you telling us you do not have any authority now?

Mr. Crosbie: That is right.

Mr. J. A. Taylor: Now you are seeking authority in order to mandate loan and trust companies to submit their procedural manuals. Is that what you are doing?

3:20 p.m.

Mr. Crosbie: Yes. In essence, that is what it comes down to. If you are going to mandate that a corporation have a procedural manual setting out the limits which require a board of directors' approval for mortgages, what do you do if the company does not comply? How do you enforce the requirement in the act? You can say: "We will make it a penalty and we will take him to court. Every time we find a company without one, we will take it to court and fine the company." Another alternative is to give the registrar the power to require it.

Mr. J. A. Taylor: For example, many years ago the Ministry of Municipal Affairs and Housing put out an assessor's manual. It built up to be quite a manual. I do not know whether or not you have ever tried to read the Ontario Building Code.

Are we looking for a buildup in terms of this type of manual that has to be submitted, reviewed and so on? I am just wondering how far this goes, or is it just a matter of making sure there is some power on the part of the registrar to require a loan and trust company to submit for approval a manual of internal procedures?

Mr. Crosbie: I do not see it as a case of submitting the manual to the registrar, but there would have to be a requirement that it be there and presumably in the course of inspections--or maybe it is a requirement of the auditor. Right now, the auditor is required to certify that, as far as he is aware, there is compliance with the act. Maybe the auditor would certify there is a manual in place. It seems to me if you are going to make it a requirement, there has to be some mechanism to enforce it.

Mr. J. A. Taylor: I was wondering about that.

Mr. Renwick: Some enforcement capacity in the registrar may be down the road. It seems to me the road into the problem is not necessarily to focus on the registrar and what enforcement powers he has, but to focus basically on the relationship between the auditors and other professional advisers of the company to satisfy the registrar that there are adequate controls in force, rather than to say this is the pattern by which it can be done.

Coupled with that is the development of some sort of common, basic standards that are involved. I am sure the management of every trust company will say, "We are different from every other one." Each company is not different, however, when you get down to the ingredients of being able to call for the file on a particular investment and what you expect to find in the file, and that kind of problem.

It seems to me it should somehow be through the auditors and, to the extent necessary, through the lawyers or appraisers who seem to be the main professional people. All we can do is say some form of standard manual makes sense as well as some surveillance and responsibility on the professional advisers to the company to seek compliance.

Later on, if there is a continuing failure to obtain satisfaction on that matter, I guess the registrar has to exercise

some kind of discretionary power in the sense that he considers the interests of the depositors and guaranteed investment certificate holders to be in jeopardy.

Mr. J. A. Taylor: I do not want to prolong this, Mr. Chairman. I was wondering whether it would merely be a requirement in terms of legislation--and the breach of that section would normally draw a penalty--whether there was actually a submission procedure to the registrar, The white paper indicates it has to be approved by the registrar. If that is so, you are setting up another process. Once you start setting up a process, it goes further than what Mr. Renwick has in mind, or could, if you understand what I am talking about.

Mr. Crosbie: What I find interesting in the discussion is that Mr. Renwick describes it in one way, where the enforcement of the registrar comes up as the last element, the last resort. That is the way I hope it would operate. You are focusing on the fact that there will be that last resort. At some point, the registrar must have the power or will be given the power to enforce something. That is probably true.

If you are going to have a requirement in the act, then it has to be enforceable. There is no point in having a requirement that has no consequences if it is disregarded. It is the mechanism by which you get to the enforcement.

Recapping some of the things we have said here, the registrar, in the course of reviewing, could draw it to the attention of the company. He could draw it to the attention of the directors that if they continue in this line, they may find themselves liable because there is no adequate control of the mortgages that are going out of the company. You might make it a term and condition of their licence at some point. You might say, "We will not allow you to increase your borrowing ratio until you get a manual in place." There are a number of devices one could think of. At some point, there has to be some mechanism that compels it.

Mr. Chairman: We will move on to page E-3, item 3:
"External advisers should be made legally accountable."

Mr. Renwick: I spoke earlier on this matter. The one point I want to emphasize is that the only way I know to get on the road to legal accountability is to have some kind of initial piece of paper signed certifying something. It does not matter what it is. Otherwise, you are immediately in a quagmire of problems, trying to prove something in a very nebulous world of nothing.

I happen to believe the scratch of the pen is a hell of a lot better than all sorts of other evidence about something. Speaking only from my own experience, I know very well that when you ask a couple of the directors of a company to sign a prospectus certificate under the Securities Act with respect to full, true and plain disclosure and so on, you can be God-damn certain there is a hesitancy before the pen goes on the piece of paper. There are a lot of comments around the table, "If I go to jail, you are going to go with me." There is all of that.

Mr. Breithaupt: "Will you come to visit me?"

Mr. Chairman: "Send parcels."

Mr. Renwick: It is the same with any form of compliance certificate. You have the piece of paper. I am not particularly concerned about forcing the appraisers to join some self-governing body or not. That is up to the management they retain, the same as lawyers or anybody else. They retain them to do it.

The crucial part is that there has to be the piece of paper from that person saying he certifies so and so. He certifies, "I have appraised the property." Or you could add, "I certify that I am qualified to appraise this property and I certify that it is appraised at such and such and so and so." I think it is possible to devise the kind of document that raises those kinds of problems and raises them very clearly.

I do not know that much about the world of scamming, but the scams I have seen have been in one of two categories. One is where the guy has confused the God-damned picture so much that you can never reconstruct it. Either he does not have any papers or he has lost them or whatever it is. He keeps it all in his head until he runs out of his capacity to do it.

3:30 p.m.

The other kind is the meticulous operation where every conceivable legal detail is attended to and you parcel it out to a half a dozen firms of lawyers, accountants, bankers and so on, so there is nothing wrong with any one part of it. When you put it all together, some guy has just disappeared across the border with the bundle. You can never get at any of the people unless you have a piece of paper to start with. It is just about that simple.

Mr. J. A. Taylor: A lot of that is in place now, in terms of approval stamps or whatever, whether it is a lawyer, an engineer, or whatever profession is involved.

Mr. Renwick: As I emphasized at the beginning, I do not want to go on a paper parade on the thing, but there are certain limited numbers of additional pieces of paper that would be extremely helpful as part of the enforcement process. The words "I certify" raise the problem.

You can spot the guy who does not want to be on the hook because he says, "Is it all right for me to sign it?" You say, "Read it," and he says: "I do not want to read it. You tell me." He can always say he never really knew what the hell was in it. The actual act of getting people in business to sign papers is a very important part of the enforcement. At least I think it is.

Mr. Chairman: Anything further on item 3? If not, we will move to item 4.

Mr. Renwick: We talked about that.

Mr. Chairman: Yes, basically, we talked about item 4, about the auditors and the lawyers. It says, "A professional association should be expected to redefine codes of conduct and ethics," which we have.

E5: "Auditors should be given rights to call and attend audit committee meetings."

Mr. Breithaupt: I find it curious that auditors would be given the right to call an audit meeting. That is quite different from the responsibilities of the members of an audit committee to seek whatever information they can or then approve materials that are put before them.

Perhaps Mr. Thompson could help us in this. Do you foresee a circumstance where an audit committee of a trust or loan company would not meet and have to be required to meet through some power which the auditor might have?

Mr. Thompson: In my view, what we are saying here is that the auditor--particularly if he has not had a satisfactory answer perhaps from management--can himself initiate the calling of the audit.

Mr. Breithaupt: He can request that the chairman of the committee call a meeting.

Mr. Thompson: Yes, and be there to present his position to the whole committee.

Mr. Breithaupt: If the meeting is not called, he will have some record of the fact that he tried to bring certain items forward.

Mr. Thompson: Yes, and he probably would then, in turn, resign as auditor and note that as his reason.

Mr. Breithaupt: So he would not be calling the meeting, but he could request that a meeting occur, which is something slightly different.

Mr. Thompson: He could call the meeting. That is what our recommendation says.

Mr. Breithaupt: You would like to have him be able to call the meeting as a last-ditch opportunity to get his point across.

Mr. Thompson: Right. He could call that meeting.

Mr. Breithaupt: Then if it does not occur, or people do not show up for it, he has done everything he possibly can.

Mr. Thompson: Yes. Then he would, in turn, advise the registrar that he has resigned and that he brought up a matter and it was not attended to.

Mr. Breithaupt: I would have thought that he would have the duty, not only the opportunity, to attend any audit committee meetings. Surely the fact, as you have underlined it, that he should have the right to attend should be irrelevant, should it not? Would he not automatically have that right? Or do you simply wish to have it all in one place to highlight that responsibility?

Mr. Thompson: Yes, on both factors. He should have the right to call and he should have the right to attend, so he is present there.

Mr. Chairman: Anything further on item 5?

Mr. Renwick: I think we should ask either the ministry or our own research people to check out with the Institute of Chartered Accountants of Ontario what their comment is on that, unless they have already made a comment on it.

Mr. Nigro: I would like to comment on that. In section G of the white paper dealing with the management and organization, in the miscellaneous part, there is a comment from the Institute of Chartered Accountants of Ontario which partially addresses the question which the committee has been dealing with. It addresses it in general, not only the audit committee but also the investment committee. It is on page G-7 of the paper we prepared.

Mr. Renwick: If I am ahead of the game, we can wait. I would appreciate their view on it to clarify what the position is.

Mr. Crosbie: I would like to draw the committee's attention to the Royal Trust comment on page E-5. As I understand their comment, they are suggesting that where the holding company has an audit committee, it is not necessary for the trust company to have one. In effect, the management of the trust company gets carried on externally to the trust company. We disagree with that. These committees have to be committees of the incorporated and registered company, not of the holding company.

Mr. Breithaupt: Through directors of that trust company, not through directors of the holding company as such.

Mr. Crosbie: Yes.

Mr. Breithaupt: They may be the same individuals, but with respect to that responsibility, that should be sharpened that way. I think so.

Mr. Chairman: Are you satisfied, Mr. Renwick?

Being nothing further on E5 we will move to E6. "Auditors should be expected to advise the board of directors and the registrar of breaches of conflicts of interest rules that come to their attention."

Mr. Renwick: Questions such as how to do that are always difficult questions. I guess professionals find it extremely difficult to make those kinds of judgements. I do not know how we

could cope with that recommendation. One aspect of this which I think is extremely important is that if a firm of auditors either resigns or is not reappointed, whichever it is, there should be an obligation on the auditing firm to advise the registrar in writing and to state the reasons for their resignation or to tell him that they have not been reappointed.

The polite way is to resign and somebody else is appointed. You never ever find out the basic disagreement that led to it. Unless there is some insurmountable obstacle, that is perhaps a better approach than requiring them positively always to monitor whether there had been some breach of the conflict of interest rule. If it is sufficiently serious, they will either get the God-damned thing corrected internally or they will resign. That would be my view of it.

Mr. Chairman: Would they be protected from personal liability in this case?

Mr. Renwick: Do you mean if they were wrong in what they were saying about advising the registrar? I do not know whether they would be protected or not, but they would probably be insured.

Mr. Breithaupt: I do not find much in this recommendation. It is pretty weak. Even to say that auditors should be expected to do certain things--I had always presumed that was their duty. Why would you have such a general phrase as "should be expected," as though that is not the normal responsibility? If you are going to require auditors to do certain things in the statute, you should say so, but to put in that kind of general phrase presumes that from their code of ethics or their ordinary tasks they are not doing something I thought they were paid to do. Is there a reason for what I think is somewhat weak phrasing of that kind of a principle?

3:40 p.m.

Mr. Crosbie: In drafting this provision, we were mindful of the difficulties Mr. Renwick referred to. This was an enlargement. The auditors may very well have a duty to report to the directors, but I do not think they have one to report to the registrar. So we were enlarging the the scope of it.

I would suggest to the committee that this an area the ministry should review very carefully with the professional association to determine the scope or the reasonable onus that could be placed on auditors in these circumstances. The association made the observation when the presentation was made that if you put too onerous a requirement of this type on auditors, it might lead auditors to be less diligent because they do not want to report their clients to the registrar.

Mr. Breithaupt: After all, their responsibility and connection is with the client. If, from our earlier discussion, you want the auditor to say, "There is section 152, you know, and if this is not cleaned up, I have the right to go to the registrar", it may have value as a last ditch, clear opportunity, which is within the statute.

If you want that sort of power and if you want to provide the auditor with a certain last ditch way of getting the attention of the management of a company, then I agree, it must be clearly in the statute. It cannot be a regulation, a rule of thumb, a guideline, an ethic, or anything else. You must have something to which you can point in order to protect that auditor from the various other actions which could accrue because of things which were said about what this person or that person did.

You may need it in the statute in order to clarify that final, end-run right and duty, which an auditor, on occasion, may have to use.

Mr. Renwick: This also presumes there are conflict of interest rules--I may have to start that with an "if"--if there are conflict of interest rules. We have not got around to asking, what the hell are the conflict of interest rules? What are the rules that cannot be broken? Maybe we will touch upon rules of conflict of interest when we get to the directors and officers of a company.

There is a Jim Renwick amendment to the Business Corporations Act which attempted to deal with the question of a senior officer of a company, a chief executive officer and a director who, unknown to his colleagues on the board, had entered the company of which he was the chief executive officer into a contract with a company which he controlled, with respect to the provision of services. As usual, there was no argument that the company got value for its services, but that does not make it all right. That is not the point. Who the hell is to say whether they got value for their services in many cases?

After some difficulty, the companies branch agreed to put in an amendment the last time the Business Corporations Act was up for amendment in the House. I think that might be helpful when we come to questions of accountability. Regardless of whether the corporation did or did not get value for the service, that was not the point; it failed to do so and therefore it was accountable for the profit it made for the company, and the company did not claim it--any shareholder on behalf of the company could do so. That kind of tie-in is possible.

Mr. Chairman: Have you any comments, Mr. Crosbie, or are you just going to leave it and are you going to review it?

Mr. Crosbie: No. I think we would review it in terms of the comments of the committee. As I said before, I think this is one of those areas where our discussions with the Institute of Chartered Accountants of Ontario will be useful in trying to determine the types of conflict rules that are appropriately dealt with by an auditor.

When an auditor is in there, we recognize there are two types of conflicts we have talked about. There might be financial conflicts and there might be management conflicts. The auditors, by and large, may be just looking at the financial side of things, and we would not anticipate them getting into some of the other types of conflict we have talked about. I think it is important for us to review this with the institute.

Mr. Chairman: We will move on to recommendation 7 on page E-7, which says, "Registered mortgage brokers and their officers should be ineligible to serve as directors of loan and trust corporations."

Mr. Breithaupt: Mr. Chairman, groups who have come before us have consistently opposed this. I felt we had a consensus or an attitude that it seemed unnecessarily harsh in the absence of some particular reasons. I would like to hear from the staff people whether they still think this is a valid point for future legislation.

Mr. Crosbie: Mr. Chairman, in light of the submissions, we have been giving considerable thought to this recommendation. I would start off by saying we could be convinced we have gone too far on the recommendation. What I would like to do is just put a few thoughts out to see whether the committee might be of some assistance on alternative approaches.

Basically, our concern was with the potential for conflict of interest that exists when there is a mortgage broker who is essentially in the same type of business of lending money. He is serving on the board of a trust company. There are types of conflicts that could arise. For example, we heard the other day where any member of the board could veto a loan and that loans got vetoed--

Mr. Breithaupt: A member of the investment committee.

Mr. Crosbie: Investment committee, yes. If that is where the director, who is a mortgage broker, is serving, and presumably he is there because of his skill on mortgage investments, he could veto a good loan knowing, as we heard the other day--and I am not suggesting this company does this--that where the loan gets vetoed on this committee, he picks it up, wearing his other hat as mortgage broker.

Alternatively, he might be in a position to direct the committee to approve a loan for a mortgage he is brokering. With those two examples--and you might think of more if you put your minds to it--there are lots of opportunities for conflict in the type of decisions.

There is another aspect of this issue, and it is certainly not one that came out in the recommendation. When we were looking at the conflict of mortgage brokers and directors of loan and trust corporations, we recognized conflicts frequently arise because the same operation is being carried on by the same people. That is why you have a mortgage broker on the board. It is the same people who own two different companies, operating out of the same building and the same offices, as we heard in some of the testimony.

We are concerned that an investor going into such an office knows who he is dealing with. Is he dealing with a trust company or a mortgage broker? Is he buying a guaranteed investment certificate or is he investing in a mortgage? Is he going to be

subject to the bait and switch? Is he going to invest in a trust company and come out having invested in a mortgage? We were concerned about that aspect. We are concerned about the possibility of the mortgage broker using his position to place mortgages through the trust company and taking commissions on them. Should that be allowed?

3:50 p.m.

If one were to say it is not logical to totally prohibit registered mortgage brokers from serving on boards of directors, what sorts of rules would then be necessary to prevent the types of conflict I just mentioned? How do you prevent the mortgage broker from having a direct financial benefit from any of the loans on which he is giving advice to the trust company, particularly when a veto allows that mortgage to slip out of the trust company portfolio and into the mortgage broker's portfolio?

Those were the issues in the back of our minds as we tried to address some remedy. We were a bit simplistic in saying you could just keep the mortgage broker out of the process and you would eliminate most of the problems. It would seem to me there are quite legitimate ways in which mortgage brokers become involved. It might be that they are directors on a subsidiary company, they are mortgage brokers on that company and they serve on the board of the parent company and this could disqualify them. There are issues of that kind which we did not intend to prohibit.

I would appreciate the comments of the committee on the issues.

Mr. Renwick: There are two things you have to explore. One is whether or not it is possible to put down in words the disqualification process rather than a prohibition; what are the circumstances which would disqualify. I do not know whether that is possible or not.

The other way is simply to go the relatively traditional route of simply saying that he is required to disclose his interest at the time of the transaction, not at some irrelevant time, which is a big loophole in most of these disclosure requirements, to refrain from voting and to absent himself from the discussion and the decision. That is what is required in the Bank Act.

Mr. MacQuarrie: That is the standard in most conflict of interest situations where you are in a position to vote.

Mr. Breithaupt: It seems to me that is the way to handle it because to have this blanket prohibition is just not reasonable.

Mr. MacQuarrie: The thing about this prohibition that troubles me was pointed out by some of the witnesses. There are others who are similarly placed or could be placed in conflict of interest situations. Regional Trust mentioned investment dealers, real estate investment companies, and even a real estate broker sitting on a board approving mortgages that could conceivably be of some benefit to him.

To pick out an occupation or calling and say they cannot do this is really the wrong approach. Perhaps we should be approaching it through the directors' qualifications and how the directors are to behave.

Mr. Renwick: The traditional laconic way in which those declarations and disabilities are appraised needs to be looked at. Everybody who has been around at all knows that those are not honoured in the breach, but that they would make some general disclosure at some particular time and it gets filed away in the minute book and everybody forgets about it, or that Joe is all right and so on.

The banks have gone further than any other on it and it is a good starting point. If the company wants to have the benefit of the advice of a registered mortgage broker who is going to be making a profit out of it, that is not an illegitimate thing provided it is formally approved at a shareholders' meeting so that the people know this guy is there because they value his judgement and that, in addition to being a member of the board, he is going to be paid whatever his reasonable and appropriate fees are and nobody should be holding him up to reprobation.

We can approach it that way. There may be one or two specific relationships where you could dream up an actual--where if you are a mortgage broker and these circumstances follow, it is unfortunate but you are disqualified--rather than a blanket prohibition. I do not know of any other magic about it.

Mr. Crosbie: Part of the problem could be resolved if there were--I think we talk about this later--clearer warnings on the documents used. We talk later about the extent to which an investment is covered by Canada Deposit Insurance Corp. I still have concerns about some of the operations we have heard described, where a three- or four-person operation is both the mortgage broker's office and a trust company office.

A person walking in the front door has to know when he is dealing with them in their capacity as a trust company and when he is dealing in the capacity--

Mr. Renwick: I am glad you raised that because that has been worrying me. Mr. Boudria raised it with these jokers who are agents and so on. It is the bait operation that gets me. The person comes in intending to deal with the person as agent to put his money in a trust company, and the joker asks him whether he has given any thought to this investment earning a wee bit more and all the rest of it. We have to look at that. That happened with Re-Mor at one point. People's money did not end up where they thought it was and so on.

Mr. Crosbie: Perhaps it is more appropriate when we deal with the CDIC recommendation.

Mr. Renwick: Yes, but we have to deal with that situation because it has been one of the roads to fraud in Ontario.

Mr. Boudria: If I can add to that, it is not just the fraudulent aspect. We have to appreciate the consumer is not really as informed as he could be. You see an ad in the paper for a guaranteed investment certificate--you remember one real estate company's notorious guaranteed certificate. They meant the principal was guaranteeing them personally--whatever that means and whatever that is worth. You are now recovering those funds back for the people, but using the word "guarantee" in that case was in itself confusing and incomplete.

Mr. Renwick: It is not necessarily fraud either. It is a little salesmanship in there. You divert the guy into something where he gets something else.

Mr. Boudria: When it is a trust company selling them, it may be easier--

Mr. Renwick: He will be accused by the minister of being greedy.

Mr. Boudria: --but when it is an independent agent who is selling them, he happens to sell a whole variety of other things as well, but he only has one of those advertised in his ad. You look at the ad in the newspaper and it says this guy sells guaranteed investment certificates. You may walk in there and ask for a certificate, but you do not talk about guarantee. It already said that in the ad, so why should you raise it? But that may not be what you get.

Mr. Chairman: Your point is well taken. Should we move on? Anything further on that item? If not, we can move on to item 8: "Corporations should be prohibited from purchasing or acquiring goods or management services or paying finders' fees to any affiliated corporation or holding corporation, except with the prior approval of the registrar."

Mr. Renwick: I think we covered the question of information as being the road to it rather than a prohibition requiring prior approval.

Mr. Chairman: Any other further comments?

Mr. Crosbie: I think the recommendation would be better framed if any approval process of the registrar only arose where the making of such payments might impair the borrowing base for the company's capital. Then they would be required to seek the approval of the registrar before making such payments between affiliates. Where there is a healthy company carrying on business, there does not appear to be any need to check all the intercompany dealings at that time.

Mr. Renwick: But he is entitled to be able to get information about them if he wants it.

Mr. Crosbie: Yes.

Mr. MacQuarrie: Yet if you have an income drain to an affiliate, that could affect your own financial position. I think the registrar should be allowed to jump in.

4 p.m.

Mr. Chairman: Mr. Boudria, do you have any comment?

Mr. Boudria: I am trying to clarify the reason this is here. I am looking at some of the flips of properties that came up, in particular, the Rivière du Loup shopping centre. Again, I am reading the summary in the Belford book.

"To secure its leaseback on the property, BNA Realty deposits \$1.3 million with Greymac Trust, which is then used to buy preference shares in the company. Greymac Credit exchanges five million shares and notes given to it by Greymac Properties as its profit on the flip for treasury shares of Greymac Mortgage, the parent company of Greymac Properties," and so on. It was built up in this fashion.

I gather that these sort of things are included to stop this kind of practice.

Mr. Crosbie: There are aspects of this involved.

Mr. MacQuarrie: Not just shares. These are goods, services and finders' fees.

Mr. Boudria: In that particular case, it was. I may have picked the wrong deal. There are others.

Mr. Crosbie: You could have a holding company which is providing management services to the trust company and charging an exorbitant fee for those services. You could, as Mr. MacQuarrie described, have an income drain from the trust company to the holding company which is totally inappropriate with the services being provided.

If that drain starts to affect the capital or the borrowing base of the company, it should be prevented or certainly reviewed. That is really what we are getting at.

Mr. Boudria: In fact, it could be a mechanism used by a large shareholder of a trust company to convert depositors' money into shareholders' money.

Mr. Crosbie: It could be.

Mr. Boudria: This may have happened?

Mr. Crosbie: It could have.

Mr. Chairman: Moving to page E-10, we come to item 9: "A reviewable and voidable transaction concept should be introduced so that improvident transactions between corporations and insiders or affiliates can be set aside and money or assets recovered."

Mr. Renwick: I do not object to this process. I have already commented about this amendment to the Business Corporations Act, which did not necessarily involve an improvident transaction. At least, one was not able to hang one's hat on that. In that case, it was not a question of returning anything. There was not anything to be returned. It was a question of services being performed and so on. There was the question of finding your way to the profit which had been made because of inside knowledge.

I think it could be enlarged for that purpose.

Mr. Chairman: Moving on to item 10, page E-11: "The registrar should be given authority to require changes in internal approval processes and procedures of regulated corporations."

Mr. Renwick: This was included in the discussions we already had concerning annual reviews and discretionary powers. I do not think it needs to be highlighted.

Mr. Crosbie: I agree. I would not treat it as a separate recommendation. It is implemented in other comments.

Mr. Boudria: It is actually a summary of every recommendation.

Mr. Chairman: It is a general principle which is enunciated by other recommendations.

Is there anything the committee would like to discuss under miscellaneous on page E-12? I could point out that the Royal Trust has a recommendation that is a little unusual, a little different.

Mr. Mitchell: Is there any indication whether we are going to be dealing with directors, outside directors and public interest directors?

Mr. Renwick: I am not too sure about how efficacious that kind of thing would be. They have the problem of what the hell they are going to look at in the first place. I am not saying that it could not work over time in a particular organization, but I think the protection might well be illusory.

Mr. Crosbie: It might be the sort of thing we could encourage but not require them to put into a manual.

Mr. Chairman: With that, we have come to the end of the conflict of interest.

Mr. Renwick: Mr. Chairman, I am not certain I understand the implications of exhibit 26 by the Canadian Bankers' Association on page E-12. Is that the so-called Chinese Wall operation? Is that what they are talking about on fiduciary operations?

Mr. Crosbie: I know they did express considerable concern about the conflict of interest that arises out of the investment of estate, trust and agency funds.

Mr. Renwick: A trust company's only securities would be those subordinated notes, would they not, or preferred shares, I suppose? I was not quite sure what that meant. I think there are two things there.

Mr. Thompson: Yes, there are two things. The latter part, I would think, is the ability of the trust company, as trustee, to invest in itself and to hold a cash balance. They seem to be saying it would be all right--

Mr. Renwick: --if you invested them with us.

Mr. Thompson: Yes. Hold them in cash in the bank.

Mr. Chairman: Fine. We will now move to business and powers, which is basically section F. The first item: "Corporations should be obliged to make clear to their depositors the extent to which their moneys are insured with the Canada Deposit Insurance Corp."

Mr. Mitchell: I think that goes without saying. I think it should be more than just a small sign in the window or whatever it is. Every time a person goes to make a deposit, particularly when it is in excess of what is covered under CDIC, a special emphasis should be placed on that.

Mr. Boudria: We are right back where we were a few minutes ago. This is the flip side of the same story. I mentioned a few weeks ago in front of our witnesses that there should some way of making sure the documents, the certificates themselves, are clearly labelled in such a way as to differentiate between guaranteed investments and not so guaranteed ones.

CDIC could be printed in great big letters across the background of the documents with some other way to identify them when they were not or they could be colour-coded differently so that over a period of time the consumer would automatically react to the printing, the colour of the certificate, the receipt issued or something like that which would enlighten the consumer.

I know we cannot do everything for the consumer. They have to be in a buyer-beware position of some sort. However, it is very easy for them to get confused with this type of thing.

4:10 p.m.

Mr. Chairman: Are you suggesting use of the initials or the words? The initials would be very hard for the average person. CBIC would not mean anything to the average person.

Mr. Boudria: That is quite possible. I am just suggesting it, like the initials of the Canadian Imperial Bank of Commerce which are almost the same, CIBC.

Mr. Mitchell: Or the Canadian International Development Corp. People mix the two up--the CIDC, CDIC--you know.

Mr. Boudria: There is a certain confusion there. I am not suggesting a specific way, but rather the idea of some universal form of identifying them which, over a period of time, would gain some familiarity with the consumer or something like that.

Mr. Crosbie: Mr. Chairman, I think I have to agree with Mr. Boudria. Looking at our recommendation, I do not think it goes far enough. Depositors clearly are covered to the extent of \$60,000--certainly there is a problem if you get over the \$60,000 limit--but we were talking earlier about the situation where a person comes into a CDIC-insured institution, and does not make a deposit, he winds up investing in a mortgage because it is all to a mortgage broker's office.

Somehow the word "depositor" has to be enlarged to make it clear that the client who is dealing with these corporations must know the extent to which the moneys turned over to them, whether deposited or invested--some broader word--is covered by the deposit insurance.

Mr. Boudria: I was just looking yesterday at a prospectus. It is interesting to see that the first two or three lines are about all the nonguaranteed components. That is the first thing you read on there before even the title. It explains that all of this may not be as safe as you think, and that the guarantees are guarantees the figures are right and not necessarily that you will make money out of it.

It is the first thing you see on a prospectus. Anyone picking one up is alerted to that the minute he takes it in his hand. I am just wondering if that kind of thing could be thought of through a period of time. There is no instant way of doing this.

Mr. Renwick: It could be an electric shock.

Mr. Thompson: About six months ago I discussed this with the securities commission and they are requiring now all prospectuses for pool funds to clearly show on the front that this is not an insured deposit within the meaning of the Canada Deposit Insurance Corporation Act. That should appear on the face of it and that would include the sort of mortgage funds and things such as this that are not invested in deposits which are insured--the unit trust type of operation.

Mr. Boudria: This would not be a fine print type of thing. This would be an obvious thing you would see?

Mr. Thompson: They were proposing to have it right on the face of the prospectus.

Mr. Renwick: But you cannot, because of the \$60,000 limitation. It just will not work.

Mr. Thompson: It will with the unit trusts.

Mr. Renwick: It would work for those, but if the chairman walks in with \$60,000, gets a GIC and says, "This is an insured deposit with the CDIC," and the next day walks in and deposits some money there, he is over the limit and he is gone.

Mr. Boudria: His interest would put him over the limit.

Mr. Crosbie: I do not think you can specify on a particular investment whether or not it is covered because it would be very difficult to know, but somehow the rules or the definition of coverage should be spelled out.

Mr. Boudria: You do not know everything that is covered but you do know everything that is not.

Mr. Renwick: If it were unlimited, you would be fine, but it is not.

Mr. Crosbie: That is what I say. You would have to point out that the CDIC coverage has a limit of \$60,000 in respect of the total.

Mr. Renwick: People would not read it.

Mr. Crosbie: That is right. You are not going to solve this totally. It is just a question of whether you can improve it.

Mr. Renwick: Strangely enough, speaking only of walking into an actual branch office and not the question of walking into some agent's office where you can get oversold, I would not want to see us make an invidious comparison between trust companies and banks. We have no authority to require a bank to make it clear to the depositors the extent to which they are covered. I do not think there is anything which requires a bank to tell you, is there, if you deposit in a bank?

Mr. Thompson: No. The Canada Deposit Insurance Corp. started over a year ago a campaign because they have regulations saying only an insured member institution can have the little Canada Deposit Insurance Corp. logo in the window, but they also required all insured members in all their branches to have a supply of CDIC brochures. This blue brochure gave the extent of CDIC coverage. I confess I really do not know the effectiveness of that campaign.

Mr. Boudria: I think brochures in a bank--convertible loan brochures and something else brochures--would, by their very nature, have a somewhat minimal effect.

Mr. Thompson: That would be it, in both banks and trust companies.

Mr. Renwick: It is like the brochures in the liquor stores. I do not know what is in them.

Mr. Boudria: Just coming back to this theme, I do not think we can tell a consumer this is definitely insured by CDIC because, of course, there is the \$60,000 caveat in there.

Mr. Renwick: You could put a sign up that would say: "You are insured up to \$60,000. Over that, you had better go around the corner to the next trust company."

Mr. Boudria: Definitely. It is not what I am suggesting, but what I am saying is that certain documents--

Mr. Renwick: Because it is any one trust company, is it not?

Mr. Boudria: --are clearly not covered by CDIC, the mortgage type of certificate. So at least if it was identified, as you say, Murray, clearly on those documents that it is not, well you know it is buyer beware in that particular case. You make sure up to a certain point and all this type of thing.

Mr. Renwick: I think it is adverse to the interests of the depositor if you start to say, "Well, you should have known or you ought to have known"--or whatever the hell it is--"that you were not insured because it was advertised in some way or you were told," and all of the rest of it. With a little more thought about it, I tend to think we should not agree to that at all.

I think we should let it become part of the woodwork, which apparently it was in the case of the trust company problems. By and large, people were prepared to say, "Well, I am okay."

Was there any real apprehension that there was going to be a run on other trust companies?

Mr. Crosbie: No.

Mr. Renwick: Nobody started to line up anywhere?

Mr. Crosbie: From my point of view, this recommendation more clearly relates to the Astra/Re-Mor situation, where you went into a trust company and were sold another type of investment. The people buying it thought they were in a trust company and, therefore, thought their investment was guaranteed. At least that was the position--

Mr. Renwick: This guarantee was never put in there as an inducement. It was not something the companies thought up. It was imposed on them. Therefore, they should not be allowed to use that kind of information to muddy up a claim by somebody and say, "Oh, you should have known," which is what would happen.

Mr. Crosbie: Maybe I am reacting to some of the pressures we have in other areas, but I like the idea that the consumer should have some assistance in knowing what his rights are. How far we go on it is a question of--

Mr. Renwick: Maybe the research people could give Victoria and Grey Trustco Ltd. and National Trust Co. Ltd. a call and ask them what in God's name they do so far as advising their customers about the guarantee goes.

Mr. Chairman: In the situation Mr. Boudria alluded to, where you go in to try to get one thing and the company sells you

another thing, would there not be some merit to say: "You just cannot do that. You have to split them up." That might be a way of getting around it.

Mr. Boudria: This is what I was bringing up yesterday. What are we going to do about the agents? Is the practice going to continue? Yesterday the response was that it is ultimately the trust company's responsibility. Surely the trust company cannot be held responsible if one of its agents sells a mortgage certificate from some other company. The company can only be held responsible for its own certificates.

Mr. Crosbie: If you have someone who is an agent for more than one outlet, he or she may be selling GICs for one trust company and mortgages for another firm. When this happens, you do have difficulties.

Mr. Renwick: We are entitled to some suggestions from the ministry as to possible ways of coping with this problem.

Mr. Chairman: The larger trust companies check you out thoroughly before allowing you to become one of their agents because their reputation is also on the line.

Mr. Renwick: This is one approach. The other is to simply say you can not have agents selling guaranteed investment certificates.

Mr. Boudria: Professor Friedland, who sent us the brief, suggested this, did he not?

Mr. Nigro: I cannot remember which companies.

Mr. Boudria: He suggested those agents should not exist per se because the trust role is given to the trust company and it does not matter how strict the guidelines are, if they turn around and farm the work out, we might as well not have any rules at all, according to him.

Mr. Chairman: In remote areas, for example, there is a lot of merit in having someone representing your company.

Mr. Boudria: It is cheaper than opening a branch office.

Mr. Chairman: Not only cheaper, but you are also providing a convenient service people want, a service they otherwise may not receive.

Mr. Boudria: That is right.

Mr. Chairman: Are there any further comments?

Mr. Renwick: This is a serious problem. I do not think we can come up with a watertight solution in just a few minutes.

Mr. Chairman: This may be a good time to adjourn for the day. When we come back in the morning we will continue with item 2.

The committee adjourned at 4:22 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO

THURSDAY, MARCH 1, 1984

Morning sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Boudria, D. (Prescott-Russell L)
Breithaupt, J. R. (Kitchener L)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Grande, T. (Oakwood NDP)
Kerrio, V. G. (Niagara Falls L)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitution:

Van Horne, R. G. (London North L) for Mr. Kerrio

Also taking part:

Cassidy, M. (Ottawa Centre NDP)

Clerk: Arnott, D.

Staff: Mooney, P., Researcher, Legislative Library
Nigro, A., Researcher, Legislative Library

From the Ministry of Consumer and Commercial Relations:

Crosbie, D. A., Deputy Minister

Thompson, M. A., Superintendent of Insurance and Registrar of
Loan and Trust Corporations, Financial Institutions Division

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, March 1, 1984

The committee met at 10:07 a.m. in committee room 1.

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO
(continued)

Mr. Chairman: We were dealing with the business and powers in section F. I believe we had concluded with the first item. We will move now to the second item: Funds held in trust should be segregated from a corporation's funds and shown separately in financial reports.

Are there any further questions on this? I think we had dealt with this in our previous discussion.

Mr. Crosbie: Mr. Chairman, on that point, maybe for the record again, I would ask Mr. Thompson to clarify that because I do believe some of the submissions indicated some confusion or at least a misunderstanding of what was intended and I would like Mr. Thompson to explain that recommendation.

Mr. Thompson: Several years ago there was a change in the accounting arrangement so trust companies were reporting and, in effect, lumping their trust funds into their capital base, etc., and showing it out by way of note on their statement. Our view was that even though that might be generally accepted accounting principles, it was better to emphasize the trust relationship here and this should be segregated right in the balance-sheet financial report of the company.

Mr. Chairman: Thank you, Mr. Thompson. Mr. Renwick.

Mr. Renwick: This is F-2.

Mr. Chairman: Yes.

Mr. Renwick: Just ignorance on my part. Is this recommendation saying the trust companies must comply with the statutory requirements of subsection 115(2) and subsection 116(3)?

Mr. Thompson: Yes and, as well, their estates, trusts and agencies business to show they--

Mr. Renwick: I can understand that. I am surprised they have not been, on the ETA business. I would have assumed that.

Mr. Thompson: But the main thrust of the recommendation is those particular sections.

Mr. Renwick: In other words, this will become important when we come to directors and so on. To me this has always been

the guts of the trust business. "(2) Every trust company receiving deposits in the manner authorized by subsection 1 shall be deemed to hold the deposits as trustee for the depositors and to guarantee repayment thereof, and there shall be earmarked and definitely set aside in respect thereof securities, or cash and securities, equal to the full aggregate amount thereof, and for the purposes of this subsection 'cash' includes moneys on deposit and 'securities' includes loans made upon securities."

That is funny, I guess I was just naive enough to think that would require a segregation for accounting purposes and would have reflected in the financial report.

10:10 a.m.

Similarly, with subsection 116(3): "Where it is provided by the agreement...for guaranteed investment...that specific securities should be allocated in respect thereof, such securities being earmarked and definitely set aside in respect thereof, and in respect of all other moneys received for guaranteed investment as mentioned in subsection (1), there shall be earmarked and definitely set aside in respect thereof securities, or cash and securities, equal to the full aggregate amount thereof, and for the purposes of this subsection 'cash' includes moneys on deposit and 'securities' includes loans made upon securities."

I guess I am just naive. I would have assumed that there would be no way somebody would not have shown that segregation on his financial statements; and if it is being ignored, then I think it is a very serious problem.

Mr. Crosbie: You notice, Mr. Renwick, the comment of the Institute of Chartered Accountants of Ontario on page F-3, item 20. They are advocating that it be done by way of a note to the financial statements. I think our feeling is that it should be split out as an integral part of the financial statement rather than as some second thought, if you will, or by-the-way comment at the bottom of the page.

Mr. Chairman: Have you anything further, Mr. Renwick?

Mr. Renwick: Again, if I am silly, then we had better start seriously considering removing the term "trust" from sections 115 and 116. My understanding--and I am speaking only of trust companies--is that if I am a depositor, the funds I deposit are held in trust. The statute says they must be set aside, with securities and cash there to represent the funds held in trust, and that should something go wrong in the company, I have a claim as a trustee, not as an ordinary creditor, against those funds. If somebody over the years has fooled around with the way in which that has been accounted for, then I would be seriously perturbed about kidding the public about what the term "trust" means.

I reflect a good deal of my own personal view. I happen to think the trust concept is probably the major contribution that the equity system gave to the legal system. The penumbra of obligations and duties surrounding the term "trust" is to me just fundamental and basic, and if somebody is tampering with it on the

grounds that it is an illusion or is not important or anything like that, then I would be the first one to say we had better abolish the trust companies and forget about it; let them go about their business their own way and take their chances on whether or not they can attract funds from the public.

I would expect and ask and request and demand that the accounting practices reflect this fact clearly. If necessary, I would go further and say they have to send a synoptic financial statement to every one of their depositors and guaranteed investment certificate holders once a year showing them clearly and specifying clearly their compliance with this section.

If I have been naïve over the years or if I am off base or old fashioned about this, and if somebody wants to tell me so, that is fine; but that is my view of how the world should be treated.

Mr. Chairman: Is there anything further on this particular item by any other member? If not, Mr. Renwick, in response to your request about what trust companies do to inform customers about deposit insurance, the researchers have been in touch with Victoria and Grey Trust and National Trust.

At Victoria and Grey basically it is advertised in branches. They have signs on the doors, and brochures are available; for GICs the information is on the documents; for savings accounts there is nothing on the cards. At National Trust Co. it is advertised in the branches by signs, etc. With the GICs, they are stamped on documents. New forms will have it included, and in savings accounts, they have nothing on the cards to indicate.

Mr. Renwick: I thought it would be useful to record that information in our comment on that area, from the point of view of information, perhaps indicating that somebody might, if he put his mind to it, come up with a better way of dealing with that difficult problem.

Mr. Chairman: Before we continue, I have a number of submissions from groups. One is from the Interior Designers of Ontario. After our public hearings, they came to see me in my office. They had not had a brief before the committee. I suggested if they had anything to tell us, they put it in the form of a letter and a submission, so we could look at it, as well as sending it on to Mr. Fram. I will have the clerk make copies for all the members.

Mr. Renwick: As a matter of information to the committee, I happened to be having lunch in the Sanssouci Room last week and who should come up to me and say he would like to have a word with me but Eddie Goodman, and lo this submission is on the letterhead of Eddie Goodman.

Mr. Breithaupt: Do you both dine there regularly?

Mr. Renwick: They have learned very quickly whom they should consult.

Mr. Boudria: The Sanssouci Room is a cosy, socialist spot.

Mr. Chairman: We have a submission from Public Works Canada, which is rather interesting. I will have that one done. I believe the member for Durham East (Mr. Cureatz)--

Mr. Breithaupt: The submission from Messrs. Goodman and Goodman was on my desk this morning. I presume it has already been distributed.

Mr. Chairman: I am not sure whether--

Mr. Breithaupt: I do not know that, but I have one. It says on it, "Copies to members of justice committee."

Mr. Renwick: I cannot believe Goodman and Goodman would not have distributed it.

Mr. Breithaupt: I believe they were all distributed by hand, no doubt by someone--

Mr. Renwick: By Eddie Goodman.

Mr. Chairman: More than likely.

Mr. Breithaupt: He was up here anyway.

Mr. Chairman: He was bouncing along the hallways this morning with some other members and he looked very happy.

Interjections.

Mr. Chairman: To get back to the serious side, there is also a submission from the Ontario Association of Certified Engineering Technicians and Technologists. We will have that as an exhibit too.

Mr. Renwick: I have known Eddie Goodman for only 54 years.

Interjections.

Mr. Renwick: I would not mind a comment from the ministry on whether I am crazy in my response on F-2.

Mr. Van Horne: Oh God, what an opening.

Mr. Crosbie: Sorry, on what?

Mr. Renwick: On F-2.

Mr. Crosbie: No, I think it is essential that the principles you are advocating should be confirmed in the strongest possible language, not only from the point of view of the trust relationship but also to drive home the whole responsibility that arises out of operating a trust company. I think that is terribly important.

Quite apart from that, from a legislative point of view, our jurisdiction in this area is fundamentally based on it being a trust relationship as opposed to a saving and loans operation. If Ontario is going to retain jurisdiction in this area, I think anything that reinforces the trust concept is important.

Mr. Chairman: We will move on to page F-4, item 3, which states, "A prudent lender's standard should be introduced for mortgage lending and valuation purposes for all real estate lending." We had six exhibits on this item. Any comments by the members?

Mr. Boudria: What does that mean? One would think any money you lend you would lend prudently. That is kind of motherhood. What does it really mean?

Mr. Crosbie: I would like to attempt to clarify our thinking on where we have got ourselves as a result of the very useful discussion that took place in the committee and the representations we had from the various appraisal groups.

10:20 a.m.

Perhaps in some of our earlier thinking we confused the function of property evaluation with the function of assigning lending value to that evaluation. I think it was made fairly clear to us by a number of the representations that the process one should go through is, first, to establish market value.

There was some discussion about what is the best definition of market value. Our thinking now is to go with the appraisal institute, which said that market value is the definition in the Expropriations Act, the amount that land might be expected to realize if sold in the open market by a willing seller to a willing buyer.

Mr. Boudria: That is the federal definition.

Mr. Crosbie: No. The federal definition is essentially the same concept, but they chose slightly different words.

Having established the market value, a prudent mortgage officer would look at the property, taking into account elements of value that may be very real but may be difficult to realize should he have to call the mortgage. The element of prudence enters into that second phase, I believe. In applying your accumulated experience as a mortgage officer, you might know it is not safe to put certain types of properties at 75 per cent.

We have some sort of tentative language we are looking at. It is not in legislative form. It is sort of the concept that a corporation lending money on the security of land would not lend more than 75 per cent of the market value, or such lesser percentage of value, having regard for any aspects of the property or taking the aspects into account in determining its market value that would not be reflected in the resale of a property in the hands of the lending institution.

Mr. Boudria: I see. In other words, you would expect the lender to lend a maximum of 75 per cent on a property that, all other things being equal, could be easily sold. If it is the kind of property that is not so easily sold, we would have to factor that in and lower it from 75 per cent in a prudent manner.

Mr. Crosbie: That is right. I think you would look at the market, too. If the market is rapidly changing one way or another, particularly if there are threats of a falling market, somebody might say you can sell it for--

Mr. Boudria: That is very hard to predict.

Mr. Crosbie: Oh, I realize that, but you are frequently lending money in a market that is trending one way or the other. It is more difficult. Where there is uncertainty, an appraiser might come in and, just by reading the appraisal, he is telling you: "I had a hard time appraising this. I looked at this; I looked at that. The replacement value is quite different from the income stream, which is quite different from resales of comparable property. In my best judgement, it is worth X," and he gives you a market value.

In those circumstances, a prudent lending officer might say: "Boy, that is pretty iffy. I think I had better stop at 60 per cent rather than 75 per cent." It is a pure judgement call. The message you would be trying to get into the act is difficult. I do not think you can put it in language that makes it an offence or anything like that, but you try to indicate a standard of care.

Having said that about it generally, we recognize there are certain types of properties that are going to present a particular problem. We are still wrestling with multiple-unit residential buildings, with the impact of tax advantages on market value, where it is not always certain. A tax advantage to me might not be the same tax advantage to you. If I sell property to a person in a different tax bracket, have I affected the value of the property?

When you start looking at those considerations, you have created a real conundrum in trying to come up with market value. We are still wrestling with that aspect. That is another area. If you are talking about MURBs and they have been sold to a certain class of investor and you are not sure that on a resale, should there be a foreclosure, you are going to be able to sell them to the same class of investor, maybe that is another case where you take it into account by discounting the amount of money you are going to advance.

Mr. Boudria: You are bringing in another topic, multiple-unit residential buildings, with this whole business of valuing property based on anticipatory inflation. The MURB way of doing it is to calculate the tax advantage and anticipatory inflation, put it out over 10 years and divide it all up with other factors in there. That is really where the whole idea of financing other properties that we have had things to do with over the last couple of years and in this committee actually came from.

Again, if we refer to Mr. Belford's book, he starts

explaining how this whole mess started with MURBs. What they did is use the MURB formula for everything else they were buying which, of course, was not necessarily applicable. In many people's minds, we do not even know whether it should be applicable even in MURBs, let alone anything else.

Mr. Crosbie: As I say, we do not have it in legislative language yet, but what we think we will try to come up with in the legislation is a concept based on appraisals at market value with some qualifier that the prudent lender, looking at that market value and how it was determined, could exercise prudence in determining the level of mortgage to advance. But he could not go beyond the 75 per cent level.

Mr. Chairman: Is there anything further on item 3?

Mr. Renwick: I do not have any problem with the definition and putting the definition in the situation where there is a market and there are willing buyers and willing sellers, such as the situation that normally prevails for the single-family residential dwelling. There is a marketplace, there is a listing and there are all of those questions.

The problems seem to arise where you have to use that definition in order to construct what the price would be if there were a willing buyer, a willing seller and an open market. That seems to me to be the dividing line and the problem.

I am not saying I know the solution to that, but I have a very real concern about imposing some additional test of prudence in the single-family residential property market where they are being sold in the traditional, normal way. The problem is the housing market to many people is a tight one and it is their major investment and so on.

I think there is a correlative responsibility on the major lending institutions in this market that have the privilege, such as the banks and the trust companies, to lend up to the full amount of something called "fair market value" times 75 per cent of whatever it is. I would hate to have the restrictive term cutting it back and forcing people into the second mortgage market, and then maybe into the third mortgage market back to the vendor question. Again, I am not very knowledgeable in the market, but that immediately adds to the problem of buying homes.

I do not know whether it is possible to segregate those things out to make certain this recommendation, where you want to put some extra obligation of judgement on the person who is making it, should only apply where they have to go through the exercise of creating a dollar amount as if there were an open market and a willing seller and a willing buyer there. In extreme cases, such as buying First Canadian Place or something, somebody would have to go through an exercise.

Mr. Crosbie: Yes. Another case might be if you are taking over an apartment building that is going to be renovated, which is maybe abandoned. You are going to spend a lot of money,

and when you get through, you will have a new product, and that sort of thing.

10:30 a.m.

Mr. Renwick: It is the multiple accommodation units, obviously, and it is also any building where there is not something that--I happen to think it is a real distinction. There is an element of fictitious creation. The problem with the definition is it assumes there is an open market, a willing seller and a willing buyer. As soon as you get beyond that and say there is not, you have to go through the exercise to get some dollar value for it, then you ask experts, such as appraisers or valuers, to come in and go through the professional exercise of coming up to that amount.

Whatever we do in this field, I just happen to feel a person should be able to go into a bank and have it say if it is going to accept the mortgage it will lend you the maximum it is entitled to lend you on that mortgage.

Mr. Crosbie: In the type of market you are talking about, 75 per cent, you might find that without any restriction under the act, a prudent lender would be prepared to lend 85 per cent and to limit it to 75 per cent does not really--

Mr. Renwick: Whatever the maximum is I would like the person to get.

Mr. Crosbie: I have some hesitancy going the other way and removing the concept of prudence just because you are in a market which you are sure of. Who can say they are that sure of it?

I think this idea of every time you look at a mortgage loan you look at it prudently--it does not mean to say you drop it below 75 per cent. You just examine it and make sure this is a sale that has taken place in the open market and a lot of properties are trading at this value. You are quite confident 75 per cent is a reasonable mortgage.

Mr. Chairman: Would it change the definition greatly if we took out the word "all" and put in the word "some"? Would it change the reading of the definition? That would leave you the option of leaving the housing market alone.

Mr. Renwick: Where is that?

Mr. Chairman: On the last words, "The purpose for all real estate lending." If you changed "all" to "some" or some other word, would that change the definition?

Mr. Crosbie: If I may turn that around, my concern with that is the implication that you have imprudent lending in some cases. I do not find the word "prudent" offensive in any sense.

Mr. Chairman: I do not either.

Mr. Crosbie: It is just a good, sound business judgement.

Mr. Boudria: In other words, it can always be prudent but may be measured differently in different circumstances.

Mr. Crosbie: The results are different.

Mr. Boudria: Just getting back to something Mr. Renwick raised, it is not all that easy, even in the single-family home market. For instance, the home I bought a year and a half ago had been for sale for three years. It just happened to be at a particularly rough time and the type of home which was perhaps a little hard to sell and outside the city.

There are so many other factors that go into it I think it is difficult to say single-family homes are an automatic 75 per cent and are the same in all cases. As one who has been around a number of real estate people quite frequently, I know it is not all that easy.

We have heard of what is happening right now out west where people are just letting their homes go for the mortgage, sometimes having paid on it for four and five years. The houses are actually worth less now than the mortgages on them, even though they paid considerably more.

Who would have predicted four years ago, when somebody bought in the middle of the Alberta boom, that those things would fall flat on their faces?

Mr. Breithaupt: Or even in downtown Vancouver?

Mr. Crosbie: I would just like to clarify that last point. There is a peculiarity of Alberta law that creates that. In Ontario, when you take out a mortgage on a property, you are liable on the covenant personally.

Mr. Boudria: Personally liable.

Mr. Crosbie: In Alberta, once you transfer title you are no longer liable on that covenant.

Mr. Breithaupt: Shades of the dirty '30s.

Mr. Crosbie: They are selling the property for \$1 to someone who is prepared to take that risk.

Mr. Boudria: They sell for \$1 to a numbered company.

Mr. Crosbie: Yes, and then that company rents it back for a year.

Mr. MacQuarrie: Real estate, like many other commodities, is subject to a variety of market influences, whether it is coming in on one of the government programs, the assisted home ownership program, or some of the others that will give you a fairly low-cost property at a reasonable price. You turn around

and realize an almost immediate capital gain, assuming you hold it for the specified period.

The sensitivity I feel about the real estate market, particularly mortgage lending, is that in volatile market situations such as we have experienced, we have seen in some of these other programs people just walking away and leaving the properties. When the interest rates went way up, they could not carry the mortgage at the higher interest rates. They had to let their properties go.

Lenders were taking losses on the properties, in terms of sales, because at those rates there was no demand. The markets in western Canada have been referred to, where economic activity has slowed down very substantially.

I wonder whether the answer to all of this might be to require mortgage insurance. In this way, the lender and the investor know the loans are insured, whether they are the standard 75 per cent of value or run under the National Housing Act at a high-ratio type of loan, and in that case they are insured.

There are companies in the mortgage insurance business. Some of them took a bath during when the housing stock was in that peculiar market position. I think every possible step should be taken.

I would think a prudent lender in circumstances like that would be looking for mortgage insurance. Whether we should mandate it, suggest it, whatever we do, it does not add that much additional cost to the mortgage itself. I think insurance fees run at 1.5 per cent or thereabouts. At the same time, at least the investor and the lender are protected against these market fluctuations that can, in a very short period, tremendously affect the value of property, the market value, however you want to define it.

That is a thought, Mr. Chairman. That is all.

Mr. Chairman: Thank you, Mr. MacQuarrie. I feel the same way Mr. Renwick feels. When it comes to principal dwellings, it certainly is an advantage to have a mortgage or whatever it is with the company. I would certainly like to see people get the maximum.

I do not think there is much risk when we talk about principle dwellings; it is only one of 100,000 mortgages the companies may have out. Certainly, the insurance end of it was something the federal government talked about in its proposed budget, so maybe it is going to be a fact.

Mr. Breithaupt: That is an attempt, though, to deal with fluctuations in the interest rate, more so than a guarantee of the principal to be found, should the property completely deteriorate, is it not?

It seems to me if someone wishes to, as is often the case, purchase a term life policy which decreases and therefore would

pay off the mortgage in the event of death, that is an option which some might prefer to use. Others may decide they do not wish to have that premium as a current expense.

Mr. MacQuarrie: That is quite a high price to pay for the property, then die first.

Mr. Breithaupt: Well, yes.

Mr. Chairman: It will not be yours then anyway, so why worry about it?

Mr. Breithaupt: It is all part of estate planning that some people may choose to take advantage of.

10:40 a.m.

Mr. MacQuarrie: I realize there are a lot of people who take out life insurance to cover their mortgages off, but I am looking at it from the lender's point of view. The poor purchaser is stuck with the vagaries of the market, but the lender is putting out money in good faith on the basis of certain lending principles related to value of property and the rest of it, and when value goes up and down like a roller coaster, what can he do to protect himself?

Mr. Breithaupt: This is why we have the 75 per cent theme, so that a skilled investor comes to inspect the property. Certain incomes on a rental property are considered as well as vacancy rates, the value of the house and whatever. Presumably he has the skills to come up with a value. One might say his home is worth \$100,000; he may say, "No, it is worth only \$80,000, and therefore we will lend you only \$60,000." The marketplace sorts these things out.

Mr. Renwick: I guess what bothered me about the wording of this thing, if one can fool with the semantics of it for a minute or two, is "should be introduced," as though it has not been there. I basically think that in the mortgage lending business in Canada there has been a prudent-lender standard.

What I am trying to say to reinforce the point I made is that even in Mr. Boudria's case there was an open market; there was a place on which you could put the piece of property where anybody could come and deal in it. If one can make an analogy with the stock market, it is listed there and is available for anybody. There may not be a sale, but there is an open market; there is a bid price and an asked price. They may not meld and the guy may not be prepared to accept it or whatever it is; there may not be sales, but there certainly are bid and asked prices on a lot of the stocks, and I am sure there are bid and asked prices in relation to the house Mr. Boudria said (inaudible). At some point in the course of time a deal was made and that was it.

I wanted to try to make the distinction where the criteria in fact exist. I think maybe what I would like us to say is that it has been our assessment that a prudent-lender standard has been used in those areas. The problem arises when you are not applying

this standard to values for appraisal purposes or for lending purposes, where these conditions do not exist. We have to reinforce the idea that you are supposed to use the same principles in the valuation of those where a fictitious value has to be placed because there is no open market and there is no willing seller--well, there may be a willing seller and a willing buyer, but all three components do not coexist at the same time.

Mr. Breithaupt: I think that is an important distinction to make because, purely to look at this theme, one would almost think a standard has not existed.

It does exist. We have to make sure the rules are applied equally in all the circumstances, and I think this is the point, not the idea that suddenly we are going to be creating a standard. We know standards have existed. Most companies follow them; they have the rules on appraisal and requirements for reports and various other market tests. Our expectation, I would hope, would be that this kind of approach is followed consistently by all of the functionaries in this market.

Mr. J. A. Taylor: Mr. Chairman, you are not going to get any fail-safe definition, because it depends on the market; the market may not be there tomorrow--for example, if a mine closes down. If we have a situation, say, where the price of uranium falls on the world market, the Bancroft area is affected. Elliot Lake was a ghost town at one time, the hotels and so on. Depending on external market conditions, you can end up with a property that is almost valueless.

You are not going to achieve something that is fail-safe in terms of protecting every investor. I agree that prudent judgement and a combination of approaches in assessing value have been used. They do not just take a single approach. There are several approaches that are taken, depending upon the part of Ontario you are in.

Another thing we must not confuse is the social factor in making mortgage moneys available to the homeowner in Picton, Napanee or in rural parts of Ontario where it may be more difficult to obtain a mortgage loan, where the market is thin, where there is no growth. On the contrary, there may be a shrinking of population so that, while it may be beneficial from a social point of view to make mortgage moneys available, from a lender's point of view there may not be much enticement to put money out, so a lender is discounting value considerably.

You are not going to find a simple solution. As I see it, we have already focused on the big problem, that when you get into these contrived values or non-arm's-length transactions, you are gambling on inflation, and many people have done that. There is a whole generation of young people who have gambled on inflation. You wonder how they could ever afford to buy the homes they have bought. The interest rates have been crazy and the prices have been crazy, but because of the economy they have come out the winners. Maybe if the next generation proceeds with that mentality, they would all be losers. They may very well be losing their houses.

If you have a fairly standard definition, as in the Expropriations Act or the Assessment Act, I do not know what more you can really do.

Mr. MacQuarrie: For purposes of consistency, the definition of market value put forward by the Canadian Society of Appraisers seems appropriate.

Mr. Renwick: Mr. Chairman, what is the name of the counsel for the Canadian Society of Appraisers?

Mr. J. A. Taylor: We had J. Wallace Beaton. He was not the counsel but--

Mr. MacQuarrie: He was the spokesman.

Mr. Renwick: They were sitting there and he was on this end. I thought it was the Canadian Society of Appraisers.

Mr. Crosbie: Are you thinking of Mr. Onyschuk?

Mr. Renwick: Yes. Mr. Onyschuk.

Mr. MacQuarrie: He came in with another group.

Mr. Crosbie: The Appraisal Institute of Canada.

Mr. Renwick: It was an appraisal group. Anyway, he made the statement that the traditional definition, coupled with the court's interpretation of that definition, is adequate. He made quite a flat statement. With your experience in this, do you feel that is so?

Mr. J. A. Taylor: I would think so. It has been around a long time and there has been a lot of legal interpretations of and litigation on it. In terms of arbitration or expropriations, it is there; it is known. I do not see why you would want to fiddle with a definition such as that.

10:50 a.m.

Mr. Renwick: I accept that. I think one of the things that bothers me, and I guess it was in the book--

Mr. Chairman: Belford's book.

Mr. Renwick: --is that Price Waterhouse had gone through all these mathematical calculations. They were strictly mathematical calculations, such as if you start with one result you come out the same way at the end. It seemed to me that was being transposed in the way it was being used and put to prospective investors in multiple-unit residential buildings operations as if that were some valuation of the properties. I believe it was Price Waterhouse. In the Price Waterhouse statement, it was carefully qualified that the mathematics were right. If you think of a number and you multiply it by two and you add 10 and divide by two and subtract the number you first thought of, the result will be right.

Mr. Chairman: A Billy Player special.

Mr. Renwick: It was somehow being used for the purpose of someone saying that was the value of the property. That seemed to me to come through in the book. I do not have a problem. I know that Mr. Onyschuk is a devout Tory.

Mr. Chairman: Are you sure?

Mr. Renwick: I know that the member for Prince Edward-Lennox (Mr. J. A. Taylor) is too. In this particular area, I do not have any problem with accepting that proposition and I do not think we should be seen to be monkeying with it, but somehow or other we have to say value is value is value and that is it. We cannot start to chop and change what speculatively it might be in different circumstances and conditions.

Mr. Crosbie: I just want to clarify one point. I would certainly like to reinforce the comment in the recommendation where we speak of introducing a standard. We did not intend to say there was not such a standard being applied. In fact, on page 28 of the white paper, we have said: "While the term 'value' is not defined, it has always been interpreted conservatively by responsible corporations. In view of some of the practices which have been recently employed, it is desirable to clarify accepted practices and prescribe that the value of the real estate for mortgage lending purposes should be determined by prudent lending standards."

What we are saying here when we say "introduced" is actually a clearer statement of this concept being incorporated into the legislation .

Mr. Renwick: I misread the term "introduced." As long as that point is made.

Mr. Chairman: With that final comment, we will move to page F-6 recommendation 4 which reads: "Third and subsequent mortgages should be limited as investments for all loan and trust corporations."

Mr. Breithaupt: Just exactly what does that mean? Does that mean you can only have a few of them, or is the intention really, even though the wording is not as precise as it could be, to completely deny that as an opportunity.

Mr. Crosbie: The intention is not to deny it entirely. There is a place for third and fourth mortgages. Our concern is that if you are holding a third mortgage, for example, and there is default on the first mortgage, to protect your third mortgage you may have to buy out the first and the second. The financial commitment you have on a third mortgage is not limited to the amount of money you have advanced on it.

If a trust company specializes in third mortgages, in a downturn in the economy, when there may be a lot of foreclosures, the trust company exposure in that market is going to be much

higher than the face value of the moneys they have advanced on third mortgages.

We are saying this is an area, once again, where prudence comes in, and you should not have a heavy volume or a substantial volume of third mortgages in your portfolio. Exercise prudence so you do not get caught off base by--

Mr. Breithaupt: That may well be. This is only three lines but it seems to be somewhat of a motherhood kind of statement unless you define the limitations. If, for example, you would require that further subsequent mortgages be part of a basket clause situation that could not therefore exceed a certain percentage of total, that might be a reasonable point. If you say that third and subsequent mortgages may not be used as an asset in calculating multiplier advantage, that may have a point to it. But simply to say they should be limited, without giving us some idea of the limitations in mind, does not make it much of a principle to me. This sort of statement is so obvious it hardly needs delineation in a white paper that is looking for proposals.

Mr. J. A. Taylor: As a matter of fact, maybe you should not take a second mortgage, depending on the size of the first.

Mr. Breithaupt: The interest rate differential covers the risk to some extent. Again, the prudent lender we have been discussing for the last half hour will consider those factors. I am interested in greater precision as to the limitation because, unless those kinds of examples I used are going to be the particulars of the limitation, the statement does not seem to me to have much of a bite.

Mr. Crosbie: I can appreciate your observations. Perhaps with more work, we can be more precise. I agree that you could not put it in the legislation in that form. As you say, "be careful with their mortgages" is almost a motherhood statement. If we could not translate it into some type of criterion--basket clause or a percentage, as you have suggested--it should not go into the legislation.

In other areas, we talked about the cost of borrowing. I do not think you can prescribe in the legislation, or that you should prescribe in the legislation, how you are going to limit the cost of borrowing. It depends on the marketplace at the time. That might also be a problem with third mortgages. In certain markets they are much more susceptible to creating problems than they are in others.

In summary, I am saying I agree with your observation that there is a need to particularize the test you would apply, if you are going to make that a rule in the act or the regulations.

Mr. MacQuarrie: I have a little bit of difficulty with this provision. One common situation when you see third mortgages coming into play is a blanket mortgage where a person is looking for additional financing. He comes to a lending institution. He has on his property a six per cent mortgage with Canada Mortgage

and Housing Corp., which is paid down with about 10 years to run and a fairly low principal balance outstanding. He is also carrying a second mortgage that could have been taken out at the time of purchase as a mortgage back to a vendor at a low rate of interest.

The company, as a prudent investor, looks at the mortgages and says: "Look, we should keep those mortgages in place. We will give you the difference in terms of mortgages between what we would otherwise be lending on a first mortgage and the total principal outstanding on those two. Here is your money. We will take a third mortgage."

The company is in the position if anything goes wrong to buy out the first and second mortgage. In the meantime, it is making money on the spread. The company could possibly even lower the interest rate a bit below the prevailing rate on the first mortgage on refinancing. Its effective rate of return would still be higher. In that situation, it would be the height of prudence to handle the situation to blanket the first two.

11 a.m.

Guardian Trust makes a reasonable presentation there. When the mortgages that rank higher than the third and subsequent mortgages bring the total above the amount you would have loaned on a first mortgage in the first instance, then you should not be in the game at all.

But there is certainly a place in the business, I think, for the third and subsequent mortgages, depending on the amount of security that is unencumbered. You can end up benefiting both the investor and the borrower.

Mr. Chairman: Is there anything further on recommendation 4?

Mr. Crosbie: If I may just comment on the Guardian Trustco comment in which they say, "It is illogical to prohibit investment in third mortgages," I would just observe that the recommendation does not prohibit investment in third mortgages. In fact, the case Mr. MacQuarrie indicated is probably a very appropriate place to use them.

What the body of the text says on page 29 is, "Third and subsequent mortgages by their nature should be limited investments," which means that the amount of investment by a trust company in third mortgages should be limited.

Mr. Renwick: How much is the limitation?

Mr. Crosbie: That is something we have not worked out; it is something we want to discuss.

Mr. Renwick: I think we should point that out. It seems a little fatuous for us just to say we agree with the recommendation without indicating that the problem of devising the

appropriate limitation is something that will have to be done at the ministry in consultation with the industry.

Mr. J. A. Taylor: Then is there some clarification of that, Mr. Chairman?

Mr. Chairman: I think they are going to try to put some figures on it, as I heard the deputy.

Mr. Crosbie: Yes. There are a number of recommendations in here where we have stated the general principle, and before we translate it into legislation or regulations, we would have to consult with the industry or with other advisers and come up with a reasonable test.

What we have said here in general terms is that investments in third mortgages should be limited. Mr. Breithaupt has suggested a couple of ways it might be done, and I think we would want to discuss that sort of approach with the industry and see if we can come up with a reasonable test.

Mr. J. A. Taylor: I guess we would have to take into consideration the role of a third mortgage or some subsequent mortgage as collateral or as a mechanism to ensure payment of a debt that may be based primarily on contract--that would be services, for example--to ensure there is notice on title; that before a property is conveyed, some prior debt is settled.

It may be used as a mechanism other than strictly as a security for an advance of money, so you would not want to eliminate that in your wording of--

Mr. Cassidy: I think the point Mr. MacQuarrie makes is, of course, a valid one, and we can all relate to it. We think of someone who bought a DVA home 30 or 25 years ago and is in that kind of situation, and we can relate to it because some of us may have been in that situation a few years ago when mortgage rates were at levels unheard of today.

Interjection: Seven per cent.

Mr. Cassidy: I can remember when the ceiling was six per cent. That dates me.

On the other hand, there are two instances I can think of. One is that I would have real questions about a company that was specializing in residential mortgages that were all of this nature because, whatever else happens, the third mortgage is less secure than the first or second.

Another thing is that a great deal of commercial lending effectively has been taking place in the guise of mortgage lending. One or two of the briefs we had spoke specifically about that. I think the bankers' association argued against the increase in the commercial lending limits on the grounds that a great deal of commercial lending is taking place now in the form of mortgage lending.

I am also concerned about where games are played with valuation, and then the third mortgage is generally related to an increase in valuation from the time the property was originally mortgaged. Almost by its definition, that has to take place.

There are problems there, particularly if you have a company that is prepared to bet the store on third mortgages. We do run into those situations, and the Daon Development Corp. thing is the most obvious. When I came over, that was a first, second or third.

Mr. Thompson: It was a second mortgage.

Mr. Cassidy: It was a second. Is that right?

Mr. Thompson: It started as a first mortgage but it was under agreement to subordinate to a new first. It was very complex.

Mr. Cassidy: What disturbs me about the commercial lending going on was that the size of the loans was getting excessive, relative to the size of the firms. For example, if some of those mortgages had been genuinely syndicated to other trust companies, the chance to scrutinize the value of the asset would have been a great deal better. Other people might not have been prepared to go along with the lax standards some of our friends who brought us here in the first place were prepared to go along with.

In addition to the envelope of the legal limit, which is a legitimate type of control, I suggest you have to ensure the valuations are not so soft that they permit the legal limits to become stretchable, as they were in the cases we had before us. The question about the total amount that can be invested, relative to the size of a trust company or to what is basically the size of its equity in a particular investment may be the route to go, as a means of limiting these types of questionable investments or questionable investments that are made in this form.

Mr. Chairman: We have been discussing prudent lending standards. Have you any further comments, Mr. Deputy, on Mr. Cassidy's remarks?

Mr. Crosbie: No. We did cover a number of them earlier.

Mr. Cassidy: I am sure you did.

Mr. Crosbie: Some of them will come up later when we talk about actual limits on lending.

Mr. Chairman: We will move on to page F-7, recommendation 5: "The registrar should be entitled to require corporations to establish appraisal standards and define the circumstances under which independent appraisals are required for real property."

Mr. Renwick: We have covered a lot of the group comprised in that. Again, I would like to reinforce my view that a judicious use in various areas of compliance certificates, not signed by the assistant to the assistant secretary but signed by

the chief executive officer of the company, is a very effective way to make certain without the registrar having some problem of having to go and do it. This is the kind of place that would play a useful role.

Mr. MacQuarrie: Where are we at?

Mr. Chairman: We are at page F-7, recommendation 5.

Mr. MacQuarrie: I have no quarrel with that one.

Mr. Chairman: We will move on to page F-8, recommendation 6.

Mr. Cassidy: The case was made, for example, that internal appraisals make sense when you are appraising residential property where it is relatively routine and easily valued. Is outside appraisal to be called for when an investment reaches a certain size? Is this where the specific recourse to outside appraisals might be fitted into a regulation? May that certain size vary, depending on the size of the trust company's capital assets, so that a large trust company would have more flexibility than a small one?

Mr. Crosbie: We have talked about this concept of some limit on the value that may be appraised by an in-house appraiser. I want to check that out. I think some of the very large trust companies literally do all their appraisals in-house. We would be saying to them they cannot do that any more. Some of them have been doing these for years without problem. The issue has to be investigated, but I hesitate to say it is one that would necessarily improve the situation. I can see the merit in it though.

11:10 a.m.

Mr. Cassidy: I am uneasy about the degree of regulation in the bill. It is possible, however, that the way around it is to require that there be a waiver procedure where the registrar was satisfied in the annual review that the internal appraisal standards and procedures were appropriate.

Mr. Crosbie: We have that power now, in effect. If you have any concern about a specific appraisal of a specific property, you can have it reappraised by an appraiser designated by the registrar.

Mr. Cassidy: That is not the same thing. That requires you to look at the specific appraisal.

Mr. Crosbie: After the fact, yes.

Mr. Cassidy: It seems to me the regulation makes more sense, to look at the process that is going on rather than try to redo the work that should be done by the private firm.

Mr. Crosbie: I think you are leading us into the type of regulatory quagmire you have been trying to take us out of. In

effect, what you are saying is that on loans above a certain value the trust company shall consult with the registrar and get his approval as to whether or not it can appraise them in-house or must get an outside appraiser.

Mr. Cassidy: No. I am suggesting that if a requirement to establish appraisal standards did not exist or was not enforced, where the registrar became dissatisfied that internal appraisal standards were adequate, he would move in and say, "Hey, you better start getting independent appraisals."

Mr. Crosbie: That could be done. If the conditions in the company were deteriorating to a state where one was justified in interfering with its appraisal process, then I think under the present legislation, the amendments of last December, you could perhaps impose that as a term, that they must have appraisals over a certain value carried out by an outside appraiser. Whether you would want to make that principle something that is specifically mentioned in the act to clearly focus attention on it is another issue.

Mr. Cassidy: That is the specific recommendation here. That is the recommendation. This matter was about to pass, presumably with some endorsement from the committee. I am trying to work out what that would mean and I am making some concrete suggestions. Are you saying it is the government's view that you do not want to do that now?

Mr. Crosbie: No. What I said earlier, I guess before you came in, is that we have stated a number of the recommendations in principle because at this point we have not had time to go out and explore with the industry. Assuming as a result of this committee's work the final product is something that is acceptable, the policy is generally acceptable, then we would be in a position to go out to the industry and say: "Here is a principle that has been endorsed. Let us work together and find out what the reasonable limitations are. What is a workable way of doing this to minimize any excessive regulation?"

What I thought I said earlier was that your concept of, for argument's sake, anything over \$250,000 or \$500,000 must have an outside appraiser unless the appraisals team of the loan corporation has been approved by the registrar. It might be that, reviewing this with the industry, there are certain standards or qualities of appraisal that could be identified and one could say with some reasonable assurance that the company has the skill to do any appraisal that comes its way and you would let it do so. Others may have no significant appraisal staff and you might say to those companies, "You must go outside once you get beyond appraising a standard house." This is something I would want to give considerable thought to and work it out with the industry.

Mr. Cassidy: I am exploring. I am not suggesting I have the ideal limit.

Mr. Chairman: We will move on to page F-8, item 6. "Loan and trust corporations should not be permitted to own directly or indirectly real property having an aggregate value in excess of 10

per cent of the book value of the assets of the corporation." Is that the one, starting at the bottom of page 117? Other real estate for the production of income?

Mr. Thompson: There is also clause (n) as well.

Mr. Renwick: But that has to do with an agency of a government, does it not?

Mr. Thompson: Yes.

Mr. Renwick: That is the 10 per cent, but that is limited to government leases.

Mr. Thompson: Right. The government one is 10 per cent and the other than government--

Mr. Renwick: The other one is five per cent.

Mr. Thompson: Yes.

Mr. Renwick: But that is what we are talking about. You are talking about increasing the five per cent to 10 per cent in clause 178(1)(o), is that correct? Is that what we are talking about?

Mr. Thompson: We are talking about a total of 10 per cent.

Mr. Renwick: It says right at the top of 118, "but the book value of the investments of the corporation in real estate or leaseholds for the production of income and subject to subclause (n)(iv) shall not exceed five per cent of the book value of the total assets of the corporation."

Mr. Thompson: Right.

Mr. Renwick: Is that to change that five per cent to 10 per cent?

Mr. Thompson: It is to change both to a total of 10 per cent.

Mr. Renwick: Oh, I see. The book value of the investments of the corporation in real estate or leaseholds for the production of income under this clause and clause (o) do not exceed 10 per cent of the book value of the total assets of the corporation. Is that what we are talking about?

Mr. Thompson: Yes.

Mr. Renwick: Is this a recommendation of a change or to maintain the existing situation? I guess what I am saying is clauses 178(1)(n) and (o), deal with real estate investment.

Mr. Thompson: Right.

Mr. Renwick: One of them has as one of the qualification

items dealing with leases to governments and agencies this 10 per cent limitation. That is clause (n). Then clause (o) deals with all other real estate.

Mr. Thompson: Right.

Mr. Renwick: At the end of that, subject to subclause (n)(iv), which is the 10 per cent, "...shall not exceed five per cent of the book value of the total assets of the corporation." I guess all I am asking is are we simply being asked to recommend that five be changed to 10 in clause (o)?

Mr. Thompson: What we were intending to do was to put a cap on the whole thing of 10. So we are really bringing it down.

Mr. Crosbie: That would amend the whole thing.

Mr. Renwick: But is that the amendment? That is the place, is it?

Mr. Crosbie: Yes, I believe that is correct.

Mr. Renwick: It says "subject to subclause (n)(iv) shall not exceed," which would mean you have to add together clause (n) and clause (o). Is that right?

Mr. Crosbie: Section 188 also provides for the acquisition of real estate for its own use. So the total investment in real estate would be a maximum of 10 per cent.

Mr. Renwick: Wait a minute, now. In other words, we are including its own use? Section 188 and clauses 178(1)(n) and (o) cumulative would be a maximum of 10 per cent.

Mr. Thompson: That is correct. A cap on the total amount.

Mr. Renwick: But at the present time, section 188 is excluded. Is that right?

Mr. Thompson: Yes.

Mr. Renwick: You do not take section 188 into the calculations?

Mr. Thompson: That is correct. You have real estate for the production of income under those other two items.

11:20 a.m.

Mr. Renwick: Is that the only place where the percentage applies?

Mr. Thompson: That is correct. You have real estate for the production of income under those other two items.

Mr. Renwick: That is the only place where the percentage applies.

Mr. Thompson: That is right.

Mr. Renwick: You are asking us to add 188 to the limitation, which is in the total limitation. Is that what we are--

Mr. Thompson: Yes, we want to bring everything in and say--

Mr. Renwick: All real estate, whether it is for their own purpose or for the production of income and whether it is a direct investment or a lease, one of those strange leases under--

Mr. Thompson: Right. You have a cap of 10 per cent on the total amount the company can invest in real estate.

Mr. Renwick: I just do not know the implications of it. The Ontario Loan and Trust Companies Association feels very strongly about it. If my understanding is correct, you now want to say when you total clauses 178(1)(n) and 178(1)(o) and section 188, they should not exceed the 10 per cent of the book value of the assets. If that is what we are being asked to approve then I just do not understand the implications of it. I do not know the effect it would have at the present time on some of the major trust companies.

I just do not understand it. I understand what you are asking us to do, but I do not understand what it means.

Mr. J. A. Taylor: Supplementary: I was just trying to get what you are arriving at. I put to you the question that was asked by one of the persons making a submission. I suppose their question was, why do you perceive real property investments, revenue-producing presumably, as something less than other types of investments, or more risk or whatever.

Mr. Thompson: We are right back to what we were talking about, of limiting investment and common shares, etc., to 10 per cent. It is really the diversification of the portfolio. If you are investing in shares you have certain earning standards to meet as well. We are saying we want to look at the experience over the last two years, on the volatility of real estate in particular, and say, "From that point of view, land that was purchased for X dollars two years ago could be well below that value today." This is particularly so in some of the investments in real estate out west.

Mr. J. A. Taylor: Of course, they mentioned gas and oil property as well. I would think it would depend on what revenue is being produced, forgetting about the fluctuations and the market value of the capital asset. What is it producing and what is the likelihood of ensuring a reasonable income from that property, based on other factors, such as covenants, triple-A tenants or what have you?

Mr. Thompson: The basic thing is coming back to taking the funds of depositors and diversifying it as much as possible.

Mr. J. A. Taylor: I am thinking, for example, of

investment in a property where the government is the tenant. It would seem to me a lot of people would like to rent liquor stores to the government. They would think it was a pretty good tenant to have and if one had a long-term lease, one would be pretty well guaranteed that covenant was as good as a negotiable instrument.

Mr. Renwick: Sure, it is like my constituency office space.

Mr. Breithaupt: Not quite as profitable though.

Mr. J. A. Taylor: And not much wear and tear.

Mr. Chairman: Mr. MacQuarrie, you had something to add?

Mr. MacQuarrie: I have some of the same concerns as Mr. Taylor and Mr. Renwick. As I understand it, this is capping the trust company's rights to own property at a 10 per cent level of the book value of its assets.

I think of situations where the company invests in real estate on its own account with its own funds, as opposed to depositors' funds, up to the allowable limit. We are in a period of booming real estate value and all of a sudden that asset, instead of being the original 10 per cent, is now 20 per cent of the book value of the assets. If we have a regulation saying they are not permitted to own land having an aggregate value of more than 10 per cent of the book value, where do the corporations sit?

If a corporation, for instance--

Mr. J. A. Taylor: Are they talking book value?

Mr. MacQuarrie: I do not know if they are talking book value. They talk book value when they set the percentage, but then they talk of having an aggregate value in the first part of the recommendation.

In another situation, you might have a company joint venturing, we will say, in the development of land. It comes in with a fairly minor investment and the next thing is the services go in on the land and all the rest of it. All of a sudden, that land, instead of being raw land, is developed land and the value has increased tremendously, possibly far in excess of the 10 per cent book value, the value of the share at least.

What does the company do? Is it going to be forced to sell, or in a situation of increasing values is it going to be allowed to continue to participate and reap the ultimate benefits?

Mr. Thompson talked about deteriorating or diminishing values a while ago, but what applies in the reverse situation? Do you move in and say, "Sell off"? It is hard to sell a head office that has suddenly appreciated in value tremendously.

Mr. Thompson: Traditionally in evaluation we have not permitted any increase in the value other than the book that is shown on the company in a time of rising value.

Mr. Renwick: You are talking about at the time of investment?

Mr. Thompson: Yes.

Mr. MacQuarrie: That clears up one of the problems.

Mr. Renwick: That eliminates one of the problems.

Mr. Crosbie: Two problems arise and one you have identified. If you limit it to book value, then this 10 per cent rule is not as onerous on them. On the other hand, if they want to use that book value to increase their borrowing capacity, then obviously they would like to have the current market value, rather than the book value.

That becomes a bit of a catch-22. Our present rules do not allow them to do that. If they wanted to increase their capital, they would be forced to sell the asset under the present practices.

Mr. MacQuarrie: To increase their capital they have to sell their assets. I can appreciate the catch 22-situation.

11:30 a.m.

Mr. Cassidy: I would like to know what the current practice is. Was not the catchphrase we were given "the level playing field"? What are the dimensions of the playing field for federally incorporated banks and for federal trust and loan companies with respect to this question? What were the recommendations of the federal white paper on trust and loan companies with respect to this question?

Mr. Chairman: The bigger the better.

Mr. Thompson: I cannot speak for the banks on it but I know the federal system is the same as ours in Ontario; it does not allow an increase from the book value.

Mr. Cassidy: What proportion of book value or of capital assets is permitted to go into real estate under the federal regulation of trust and loan companies?

Mr. Thompson: It is basically what we have at present, because the investment provisions are the same for the production of income. The proportion for real estate for the production of income would be 15 per cent.

Mr. Cassidy: It would be 15 per cent?

Mr. Thompson: Yes. In effect, we are proposing we drop it down to 10 per cent and then also bring in the company's own premises for its own use.

Mr. Cassidy: The current standard in the Ontario act is 15 per cent?

Mr. Thompson: Yes, for real estate for the production of income.

Mr. Cassidy: Okay. And the head office is at present on top of that 15 per cent?

Mr. Thompson: Yes, it is.

Mr. Cassidy: So this recommends a pulling back?

Mr. Thompson: Right.

Mr. Cassidy: What were the recommendations of the federal white paper on trust and loan companies?

Mr. Thompson: My recollection is it did not propose any change, but I would think that paper would be over two years old at the present time. Our concern has been the volatility of the real estate market.

Mr. Cassidy: I have trouble with this one, Mr. Chairman. Lots of people were interested. There were more comments on this item than on almost any other of the items that came before the committee.

There are quite sharp divisions between the various interests, a lot of them based on interests. The trust companies want it up. Canada Trust, which is the maverick, wants it down. The real estate companies want it up. In general, the industry, with the exception of Canada Trust, is uneasy about this recommendation.

Although there were many briefs I do not recall having much discussion about the rights and wrongs of it, but I have a great deal of difficulty in reaching any kind of conclusion about what the impact would be.

This may be one of those areas in which it is wrong to interfere in this way, because it really gets back to the issue that if you have more controls on ownership, you will not get people playing games with real estate. If you prevent people from playing with these trust companies because of excessive ownership, then you will not need to have such excessive regulation on what they can do if they own them.

Mr. Renwick: All we can do is identify the three sorts of problems. Mr. MacQuarrie raised two; the first was the problem about the time of investment, because if you do not limit it to the time of investment, you have the problem of divesting, which I think is quite unrealistic.

The second problem Mr. MacQuarrie raised was with respect to developed property, raw land which is then developed. How do you make the adjustment within the limitation of that type of property?

The third problem is what if it is quite legitimate for them to expect to come to get an increase in their borrowing capacity because of that?

I do not think those are necessarily contradictory. I think they can be worked out.

I am kind of intrigued by the fourth one, that is the investment in oil- and gas-producing properties and other resource industries in Canada. There is some merit in what Royal Trust states is segregating out a second category of authorized investments in that area.

Mr. Breithaupt: In this example, Mr. Chairman, we really cannot do much more than observe those four points as being important considerations when this theme is finally decided. Certainly we in committee are not going to be the final decision-makers in any way. If legislation comes forward, no doubt other comments will be made by a great variety of people at that time.

If we highlight those four points as our observations on this theme, I think that is about all we can practically do under this heading.

Mr. Crosbie: Mr. Chairman, if I may just clarify one point Mr. Cassidy raised about the federal white paper, they left it up to the regulations to impose the limit. They did not specify it. Their recommendation is, "Subject to any regulations limiting the amounts, the company may invest," so they did not specify.

Mr. Cassidy: They did not take a position on the issue then?

Mr. Crosbie: No.

Mr. Cassidy: Okay.

Mr. Chairman: There being no further discussion on item 6, we should move to page F-10, item 7, which states:

"Loan and trust corporations should be entitled to engage in commercial lending up to the maximum of 15 per cent of assets of the corporation with specific limits on loans to any one borrower or related group. Corporations engaging in commercial lending should segregate their commercial lending activities from their fiduciary functions."

Are there any observations by any members?

Mr. Breithaupt: In the select committee report the percentage change suggested was from seven per cent to 10 per cent. Now we have a figure of 15 per cent as a theme. Perhaps we could have the background from Mr. Crosbie or Mr. Thompson on why the 15 per cent figure was chosen.

Mr. Crosbie: Mr. Chairman, we were attempting to recognize the difficulties loan and trust corporations are facing because of the reduction in available mortgage investments and give them more scope for investment in other areas.

I suppose you could say the 15 per cent is somewhat arbitrary. We have looked at it and it seemed to be a reasonable figure from a brief analysis we did of the lending limits companies are currently using and the extent to which they are currently using their basket clause.

I cannot give you a terribly scientific justification for the 15 per cent. From our review it seemed to be a reasonable number.

Mr. Thompson: If I might add to that, the trust industry has probably lost about 10 per cent of the residential market in mortgage lending. In addition, and this is another matter we have to address, one of the financial standard tests for companies over the 20 times multiple is that they will have 75 per cent of their assets in certain securities, one of which is residential mortgages, etc.

We felt 10 per cent and an additional five per cent, and this would be a discretionary amount to go up as experience dictates, would provide an additional type of authorized investment in their portfolio. It might make up for what they have lost and it would require readjustment in our own financial standards tests.

11:40 a.m.

Mr. Crosbie: A further rationale was that the experience indicated by some companies was that if you have seven per cent, you do not borrow up to the limit of seven per cent. You always leave a cushion in there in case a nice investment comes along and there is nowhere else to put it. They are saying that if you give them 15 per cent they may very well be borrowing at the 10 to 12 per cent level in order to leave that cushion in there.

Mr. Renwick: I just need a little clarification. We are talking about the basket, are we, and the consideration of taking it out of the basket and establishing a separate authorized category?

Mr. Crosbie: Yes.

Mr. Renwick: What is the implication for the basket? Say we did that. Commercial lending is now done under the basket.

Mr. Crosbie: Right, and now you will not be able to do commercial lending under the basket. You would only be able to do it under this 15 per cent. In effect, it has given them scope beyond the 15 per cent.

Mr. Renwick: What amendment do you then make with the basket? Do you take item (b) out of there? Does the basket disappear?

Mr. Crosbie: We are going to have to bring in a clarification on the definition of what is meant by commercial lending, then create a specific power in respect of that with the 15 per cent limit and then exclude it from the basket.

Mr. Renwick: I understand that part of it. Are you then saying that the basket will continue the way it is, that a registered loan corporation and trust company and so on--

Mr. Crosbie: At seven per cent.

Mr. Renwick: --is not authorized, and that is subject to the total book value of these commercial investments now, 15 per cent of the corporation's unimpaired capital reserve or such a percentage as the registrar may approve not in excess of seven per cent?

Mr. Thompson: Yes, except if you look into the following section, you cannot use the basket to enlarge the authority conferred in the act to invest in mortgages, etc., I think we would add an additional one there that you could not use the basket for commercial lending.

Mr. Renwick: I guess what I am asking you is, does (b) disappear then, or is there going to be a residual part of the basket in which they can have some flexibility over and above the 15 per cent?

Should we establish the commercial category, commercial lending, at 15 per cent? At the moment, there is a residual basket where they do it. Are you going to eliminate the residual basket or are you going to provide some concertina measure of flexibility for them by leaving some area for commercial lending in the basket?

Mr. Crosbie: No, no commercial lending in the basket, but the basket would remain there for other types of otherwise not-permitted clients.

Mr. Renwick: Which is a little hard to figure. With the diversification of activities, what sorts of things--

Mr. Thompson: It would allow expansion in the consumer loan area.

Mr. Renwick: Consumer loans?

Mr. Thompson: Yes, basically cars and the ordinary--

Mr. Renwick: The implication of what you are saying helps me a lot. That means that this permits a significant expansion of consumer loan lending.

Mr. Thompson: Yes.

Mr. Renwick: It gives the opportunity. There are pretty aggressive operations out there. Presumably they would move fairly quickly. At least we could ask them if they are moving. That helps me to try to understand the implications.

I do not think we can make a hell of a lot more comment other than to say it makes sense to segregate and categorize for commercial lending. Whether 15 per cent is the appropriate amount

or not, we do not have the genius in this committee to make that decision. That must be left.

The other part then is simply the effect on the basket, particularly on item (b). If that is left there and commercial lending is excluded from that, that is an increased authority with respect to consumer lending.

That would be a helpful way perhaps to comment on it. I think it is probably a wise thing to have the trust companies expand into the consumer lending field.

Mr. Chairman: Mr. Cassidy, do you have something to add?

Mr. Cassidy: I think so. At least I wanted to say something.

Mr. Chairman: It is your turn.

Mr. Cassidy: Other people can judge about your question.

I was going to ask if Mr. Crosbie or the registrar could take us through this. What are the various powers as they exist now and what will they be under these proposals?

As I see it, the basket stays at 15 per cent. A commercial basket of 15 per cent is being added. There is a real estate basket of 10 per cent on top of that, which takes you up to about 40 per cent of the total assets of a trust company.

I am not sure if there are some other various types of qualified investments. Once you get down to the gilt-edged investment area, we tend to think of that as being in the area of residential mortgages and that kind of thing, but that could be heavily into either commercial mortgages or into qualified common shares, where there has been a dividend to earnings record over a period of years.

When I put all of that together, it seems to me that a trust company could be functioning under the proposed act with its lending virtually entirely in the area of commercial lending, consumer loans and ownership of shares. Is that correct?

Mr. Thompson: No. If you add all the percentages up, it just will not work out to 100 per cent. What you are doing is capping. On the diversification principle, we are trying to put a cap on certain types of investments. How that would be mixed is basically up to the company and its own directors.

Mr. Crosbie: What Mr. Cassidy was saying is with these changes you could have a substantial portion of your investment in areas other than mortgages.

Mr. Cassidy: That is correct. Yes.

Mr. Crosbie: This might take them out of the mortgage market to a substantial extent.

Mr. Cassidy: I am just looking through the existing act. Section 178 gives a fair amount of leeway, not only with respect to bonds and mortgages, but also to common shares, preferred shares and, for that matter, even to certain leaseholds.

Would it be useful to look at that as a package, because I find that in policy terms, the way the material is presented, it is somewhat difficult to make judgements about it? We do not see the whole; we are seeing it all in bits and pieces.

I question whether the registrar and the ministry--I am not sure what kind of policy work was done there, but it does not seem that you have put it in the form that would help you to arrive at informed judgements as to whether these are appropriate changes or not.

Mr. Thompson: What we are trying to do is provide flexibility for investment as that market dictates. What you are trying to do is to encourage the sort of investments in certain areas, particularly in mortgages. We do know they have lost a considerable margin in it, but there are other types of investments they can make.

I come back to what we are saying: we think the depositors' funds, being trust funds, should be diversified and we are really saying we are putting caps on certain things in which they can invest. On the basis that there must be a broad diversification in that portfolio, to that extent we are trying to meld those two concepts together, but you are not going to have a company in commercial lending.

I hope I can address your point. If they are in the commercial lending permitted, up to the amount of 15 per cent, that is as far as they can go in that whole portfolio. You are not saying to them you are putting a cap on what is called a "commercial loan," and the aggregate of them cannot exceed that. That leaves them free to invest in the other quality-type blue chip investments, etc. which you have there. You are trying to meld that as to the dictate of the market.

Certainly, the legislation has never said that you must invest X per cent in mortgage loans. Traditionally, the source of residential mortgages in Ontario has been the trust and loan corporations.

2:50 p.m.

Getting into regulation 591, one of the financial standards of a good trust company that wants trust and loan corporations.

Getting into regulation 591, one of the financial standards of a good trust company that wants to increase its multiple over 20 times is related. You have an encouragement that more than 75 per cent of your assets must be in certain investments, one of which is residential mortgage loans, etc.

Mr. Cassidy: That is somewhere else. Is that right?

Mr. Thompson: Yes.

Mr. Cassidy: I wonder whether, in terms of flexibility and prudence--you are taking the basket, which is 15 per cent, and you are effectively raising it to 30 per cent, with certain restrictions.

Mr. Thompson: No.

Mr. Breithaupt: No.

Mr. Cassidy: I am sorry. Right now the power to make commercial loans is very limited, is it not, and it is also within the basket?

Mr. Thomspon: It is within the basket, yes.

Mr. Cassidy: Okay. Right now it is seven per cent, and it is seven per cent within the 15 per cent. Is that not correct?

Mr. Thompson: No. If you look at seven per cent and you ask if a trust company can make a commercial loan, the answer is it could if it wanted to operate the basket up to the full seven per cent in commercial loans.

Mr. Cassidy: Right. But if they did that, then the remaining basket would be eight per cent. Is that correct?

Mr. Thompson: No. What we are saying is--

Mr. Cassidy: No, I am sorry. Under the current regulation, if they put seven per cent of their assets into commercial loans, then the amount of the basket remaining for other types of nonqualified investments would be eight per cent. Is that not correct?

Mr. Thompson: No. They have used their basket.

Mr. Crosbie: The basket is seven per cent.

Mr. Cassidy: Oh, it is only seven per cent.

Mr. Thompson: Yes.

Mr. Cassidy: And you are proposing it be increased to what?

Mr. Thompson: We will leave it alone.

Mr. Crosbie: We have a basket of seven. We are creating a new basket, if you will, for commercial loans.

Mr. Cassidy: At 15 per cent.

Mr. Crosbie: At 15 per cent, yes.

Mr. Cassidy: I see. You are raising it from seven to a total of 22 per cent.

Mr. Crosbie: Yes, in the sense that now your commercial loans are in a seven per cent basket. When we are through, you could have 15 per cent in commercial loans and seven per cent in consumer loans, for example, and you have a total of 22 per cent, whereas right now you can only have seven per cent of those.

Mr. Cassidy: Right.

Mr. Crosbie: In that sense, yes, we have gone to 22 per cent, but you cannot have 22 per cent commercial loans.

Mr. Cassidy: Perhaps I can ask a question, and this is why I say the overall picture would be helpful. Right now, as I understand it, on real estate the restriction is 10 per cent of assets for the better real estate investments and another five per cent of assets for real estate investments which are not quite as good. Is that correct? That is the 10 and five per cent.

Mr. Thompson: Yes, real estate for the production of income.

Mr. Cassidy: On the one hand, you are saying companies can get into an area where there is not real property to secure the loans, and they effectively get an increase equivalent to 15 per cent for the commercial lending function, but on the other hand, you are cutting them back in terms of the real estate. I would have thought the arguments which favour cutting back the real estate from 15 to 10 per cent would be arguments that could also be used to question such a substantial increase in lending power in the commercial lending area.

Mr. Thompson: Except to this extent, the 15 per cent commercial class of investment, if we can call it that, is not given automatically. In other words, it is something that is going to be discretionary as to its size.

Mr. Cassidy: That will be part of the regulatory process.

Mr. Thompson: That is right, in the same manner as the multiple is, etc. It would be judged in the same way. It would start at maybe 2.5 times, or something, and as experience indicates, it could be expanded to levels of up to 15 times, whereas the 10 per cent in real estate is just an absolute cap. They do not have to seek any permission to get to 10 per cent.

Mr. Cassidy: Okay. Mr. Chairman, I just think a suggestion would be that one should look at the overall picture and then suggest what the overall with respect to real estate, to commercial lending and to the basket may be permitted to amount to. Therefore, that would allow more flexibility in terms of moving within those different categories. Provided that the total did not exceed, shall we say, 25, 28 or 30 per cent of total assets, that might be a useful approach.

Mr. Chairman: Are there any further comments on what Mr. Cassidy is suggesting?

Mr. Cassidy: Do you have a consensus on this particular item, Mr. Chairman?

Mr. Chairman: I think Mr. Renwick and Mr. Breithaupt had a bit of a consensus before you made the remark. I thought we decided it more or less fit in with what we were thinking on it.

Mr. Cassidy: My feeling is that yes, we would be prepared to go along with it, provided that the question of the overall amounts that are permitted to go into nontraditional trust company investments should be carefully looked at. This is a very substantial expansion; this is a tripling of the basket clause. That is what you are really talking about.

Mr. Crosbie: Mr. Chairman, may I suggest that perhaps to assist Mr. Cassidy in his appreciation or assessment of this, we would try to pull together a listing of the various types of investments that are set out in the act with the percentages that would relate to them so he could make the comparison he would like to make.

Mr. Chairman: Fine. That sounds reasonable.

Mr. Cassidy: I am suggesting that something be injected into the report, Mr. Chairman.

Mr. Chairman: It is not up to me to inject it into the report. We are asking the other members what they think, but no one has given any indication he agrees with you. So for you to suggest that I should agree with you--

Mr. Cassidy: You are the chairman.

Mr. Renwick: Perhaps Mr. Cassidy is not aware of the process we are going through because he was not about to be here when we discussed it. What we are doing now is providing input to the research people with respect to these various items. I see no problem in having a note of Mr. Cassidy's comments in whatever comes out of research. We can look at it when we are going through it again.

I think there is only one other point on F-11. I do not pretend to understand the whole thing, but I do not think we can ignore the Chinese Wall problem, which the trust companies association referred to. Then on F-12 the same point is, in a sense, made by the Co-operative Trust Company of Canada.

I do not know how that could be done, but perhaps our research people should note this question. We tried to get an understanding of the Chinese Wall problem when we were doing the select committee report, and there are some references in there to the way in which New York has tended to try to establish this sense of distance between fiduciary in-house operations of one kind or another.

Mr. Crosbie: I would point out that this concept is noted in the recommendation in the last line: "Corporations engaging in commercial lending should segregate their commercial lending activities from their fiduciary functions."

Mr. Renwick: Yes.

Mr. Crosbie: This is basically the same issue, so we have directed our minds to it as something that will have to be addressed in the process.

Mr. Renwick: It is a question of how to make the judgements without having some absolute prohibition to make certain that the trust aspect is dealt with from the trust point of view as distinct from the other business of the organization. I just want to make certain we do not overlook it.

Mr. Chairman: Is there anything further on item 7? If not, we will move to item 8 on F-13, which basically states: "No corporation should be permitted to carry on any estate, trust or agency activity in Ontario until it has satisfied the registrar that it has the commitment, organization and resources to do so on a long-term basis."

12 noon

Mr. Renwick: We have talked a lot about that particular recommendation in the course of this operation. I just think this problem is basically that the lucrative part of the business is the financial intermediary part; the relatively less lucrative--and, indeed, some people will say losing--operation is the fiduciary aspect. Yet we desperately need to make the fiduciary aspect available in Ontario to a much broader range of persons.

We tried in the select committee to make the recommendation which is referred to in item 6. You will see that at the very bottom of the remarks about the select committee on page 13 it says, "Suggested matters for consideration are outlined in paragraph 9.06."

In that, we listed one hell of a wide range of matters that have to be dealt with in relation to this question. I think we simply have to ask the government seriously to consider that whole recommendation. Nobody has looked at this for one hell of a long time and until that is done we are not going to be able to solve the problem of making the fiduciary business attractive.

When Mr. Colhoun was here he said the complaint for a long time has been that they cannot get an increase in fees. You know as well as I do that two and a half per cent in and two and a half per cent out on income account and two per cent in and two per cent out on capital account is hallowed and people will scream to high heaven if they get paid too much. Yet the trust companies say they cannot manage it and we have to supplement it.

It is not just the fee question, it is all of the items that we tried to enumerate in that report. I comment about it only to make certain we understand the extensive nature of the concern we tried to express in that committee and the essential need, as we recommended, that an appropriate group be established to make the study.

I cannot imagine anything drearier than sitting on a select committee dealing with such a topic, so if the government has some other method of making the study, that would be fine. It would be real punishment to appoint the head of some trust company to head a royal commission on it.

It is extremely important and there is no point in us going on and on saying that the estate, trust and agency business is important. I am not talking about transfer agent business and stock register business and all of the dividend payment business; I am talking about estate administration and management.

Mr. Knowles would really like to see us have these severely specialized so that this arrangement would permit individuals or groups of related or affiliated persons to form a trust company in order, for example, to manage personal assets. This type of arrangement would free the closely held situation from the fetters of equity ownership. In particular, one could see the desire and need for such a trust company in the case of an extended family group. An extended family group need not be limited to blood ties.

I would think Mr. Jackman could use such a company. Probably my friends the member for Prince Edward-Lennox (Mr. J. A. Taylor) and the member for York North (Mr. Hodgson) could use such an extended family to manage their holdings.

I think it is so absolutely essential that we come to grips with that problem. If the ministry does not think it is important, then I would like to hear it. If they think it is important, I would hope some version of the select committee's recommendation would be accepted.

Mr. Crosbie: Mr. Chairman, I certainly agree that the maintenance and improvement of estate services is a very important matter which has to be nurtured and brought along.

I understand that the Ontario Law Reform Commission is currently working on a paper on trusts and estates and I understand it will be reporting on it relatively soon. There is another one--I do not know the details but it is also related to estates--which is being studied.

Mr. Renwick: Perhaps the research people could get that information when they contact the people and find out when, in God's name, that information is going to be available, what their terms of reference are and what could be done.

If you happen to be a teacher in the borough of Etobicoke, and you have the misfortune to die and you had been a teacher for 20 or 30 years, whether you like it or not, you would have an estate well in excess of half a million dollars. There is no way in which such assets can be properly dealt with.

There is a point at which a trust company will take an estate and deal with it. The combination, however, of the house, the summer cottage or the snowmobile--whatever the recreational equivalent is--the group insurance, pension plan, all of those added together, means a lot of people leave estates of up to half a million dollars, between maybe \$300,000 and \$500,000, where it is extremely difficult to get anybody, if you wanted to maximize income for a widow with an encroachment on capital provision, to put it all together so the moneys all come to one place and are invested properly. You cannot do it through the legal profession except in rare situations, and the trust companies are not terribly interested.

We have gone a long way in pooling assets and so on to provide the facility, but the facility has to be available to a lot of people. I am talking about people who want to maximize income from the estate to the widow, and then ultimately to the children, rather than have it sort of drift away. There are a lot of people sitting around in Toronto who receive three, four or five cheques a month from different places, but I do not think most of those assets are properly looked after, and the cumulative effect is they are not invested wisely.

Mr. Chairman: Is there anything further on recommendation 8 on page F-13 from any of the members? We should look at the miscellaneous section.

Mr. Cassidy: Mr. Chairman, I am not sure what will come into the report as a consequence of my friend's comments, with which I associate myself. There is a problem there in that a regulatory framework basically allowed trust companies to get out of this sort of business because they did not feel like doing it. It means that a needed service is not going to be available.

It was pointed out earlier that it is not there now in large parts of the province. You can get it in Toronto, but you may not be able to get it in Midland, in Chapleau or places like that.

Mr. Mitchell: We covered that earlier.

Mr. Chairman: I thought we did cover part of it earlier in the week, but unfortunately you were not here. We should move on. On page F-15 under the miscellaneous heading, we have a number of groups who brought some of their concerns to our attention. Are there any comments under the miscellaneous items brought forward by the--

Mr. Breithaupt: I was particularly interested in Canada Trust's comment with respect to their view that deposits are not a trust and handling them in this way is confusing and misleading. Perhaps it just shatters another cherished illusion. I thought the traditional relationship of the trust responsibility was one of the more significant distinctions between a trust company and a chartered bank.

If that illusion is shattered and simple banking relationships result from deposits, which may be the way in which

most people with accounts in trust companies consider the money in their account, then I suppose we can throw out the whole idea of any trust relationship. I do find it somewhat curious when a very large and responsible trust company suggests the distinction is no longer of any particular value and we should simply get on with dealing with those kinds of organizations as banks of another colour.

Mr. Crosbie: I would have to agree. I was surprised at the statement that deposits are not a trust. To make that statement, I would think a trust company has not recently read the federal Trust Companies Act. I just cannot understand it.

Mr. Cassidy: I have a comment on this section but not on miscellaneous provisions.

Mr. Chairman: No further comments on this miscellaneous section? We will revert to the section.

Mr. Cassidy: Thank you, Mr. Chairman. For some reason, the recommendation on page 30 on investments in shares of other corporations is not included in the summary of recommendations at the beginning of the white paper. This is the recommendation to limit investments in shares of other corporations to no more than 10 per cent unless it is a subsidiary. If I understand correctly, that means it either has to have 51 per cent of the shares or less than 10 per cent.

I have looked through to see whether it is somewhere else in here.

Ms. Mooney: I believe that specific recommendation was dealt with in section C, was it not?

Mr. Nigro: In any event, the committee did discuss it at some length yesterday. Unfortunately, I left my notes downstairs.

Mr. Cassidy: While I was enjoying the delights of Quebec.

Mr. Nigro: It is better than Barbados, anyway.

Mr. Chairman: That brings to a conclusion this section, business and powers, and possibly this is a good time to adjourn.

Before I adjourn, I would like the committee members to be aware I have copies of Bill 100, which are reprinted to show the amendments proposed by the Attorney General in Courts of Justice Act. Those members who are going to be dealing with Bill 100 can pick up a copy from the clerk. I will not mail them out because we do not know exactly who is going to be there.

We also have Bills 122 and 123 with the amendments proposed by the Attorney General, which should make it a lot easier to resolve. The committee members can receive these from the clerk.

With that, I think we will adjourn until two o'clock this afternoon.

The committee recessed at 12:13 p.m.

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Government
Publication

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO
THURSDAY, MARCH 1, 1984
Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Boudria, D. (Prescott-Russell L)
Breithaupt, J. R. (Kitchener L)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Grande, T. (Oakwood NDP)
Kerrio, V. G. (Niagara Falls L)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitution:

Van Horne, R. G. (London North L) for Mr. Kerrio

Clerk: Arnott, D.

Staff: Mooney, P., Researcher, Legislative Library
Nigro, A., Researcher, Legislative Library

From the Ministry of Consumer and Commercial Relations:

Crosbie, D. A., Deputy Minister

Thompson, M. A., Superintendent of Insurance and Registrar of
Loan and Trust Corporations, Financial Institutions Division

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, March 1, 1984

The committee resumed at 2:19 p.m. in committee room 1.

PROPOSALS FOR REVISION OF THE LOAN AND TRUST CORPORATION
LEGISLATION AND ADMINISTRATION IN ONTARIO
(continued)

Mr. Chairman: We will be moving to a new chapter on management and organization. Recommendation 1 states: "Corporations should notify the registrar following the election, removal or resignation of any director, and prior notification and approval from the registrar would be required before the appointment of the chief executive officer or chief financial officer of every registered loan and trust corporation."

Are there any comments?

Mr. Hodgson: It sounds like good stuff. We can move on to the next.

Mr. Boudria: Can we pause for a minute?

Mr. Chairman: Certainly. Read it through.

Mr. Breithaupt: The matter of informing with respect to changes in directorship or a change of chief executive officer or chief financial officer might be suitable. I just wonder why there is the presumption that the registrar would have the ability necessarily to second-guess the decision of the board of directors as to who would be a competent person to have that pass.

I recall that some comment was made that this is apparently the English practice, that there is a review at least, or a formality--however it might be--of such an appointment. Perhaps we could be told just how the system might work in practice as you see it if this kind of thing does occur.

Mr. Crosbie: Mr. Chairman, our thinking on this is that our experience has shown a need from time to time to intervene where a CEO was being proposed who obviously had no competence to run a corporation, and the general requirements of the act dealing with the competence and fitness of the owners, I think, carry over into the chief executive officers. Particularly when the owners have no competence to operate a trust company, I think then whom they choose as their CEO and chief financial officer becomes critically important.

We have had situations arise where we felt we had to intervene in the public interest. We would rather not intervene after the fact. I think it is much more difficult and much more embarrassing for all concerned if, after a person has been appointed as chief executive officer, the registrar has to

exercise some general power under the act and say, "You have to get rid of your chief executive officer because we have just found out he has three convictions for fraud."

As the member for Kitchener (Mr. Breithaupt) has pointed out, we are looking at the English system, which requires the filing of a very extensive affidavit, I guess it is--certainly a statement--certifying as to the character and worldwide criminal record of the individual and his general competence for the position.

I would expect that in the great bulk of cases the certificate would not disclose anything that would lead the registrar to act on it. We are not going to second-guess a board of directors as to whether they have hired the best person available. If the person does not have some major flaw in his character or record, then I would expect there would be no veto by the registrar.

Mr. Mitchell: I guess it is just the question of how you answer the group--I have forgotten which one it was--who argued that they had been in a position of requiring either a chief financial officer or a chief operating officer. They had an urgent need of one immediately and they made what appears to have been an excellent choice of someone from within; but they were, if you will, on the end of the plank--

Mr. Crosbie: If I recall correctly, it was Co-operative Trust that was mentioning the appointment of a chief financial officer. I do not know if they are into the full range of trust services that would require the skills and expertise you might want if that was the type of company you were dealing with.

I think it would be a case of looking at the portfolio of investments and services that were being provided and then looking at the skills. I do not know that this particular decision would have been disqualified under our rules only on the basis that the person had never worked in a trust company before.

Mr. Mitchell: I have just one other very quick question. Would what you are talking about here mean that, if they were in that urgent situation, they could not appoint one to carry on? Would they just not be able not appoint until they had word back from the ministry or, pending that approval, could they make the appointment? Are you going to hang them out here without someone?

Mr. Crosbie: I hope we would be flexible enough to allow an acting appointment. In one respect that avoids one of the major problems we were concerned with, that an acting appointment is subsequently reviewed and you will find that the person is not qualified or is disqualified by a criminal record or something of that kind, the fact that--

Mr. Mitchell: Surely the company cannot operate without these two officers?

Mr. Crosbie: Not for very long I would not think, no. I was just going to say that if they put in an acting person who subsequently, on investigation, was found to be not qualified, then presumably they would have to suffer the embarrassment of removing him, but you are talking about the exception again. I think we would have to accommodate an exceptional circumstance.

Mr. Boudria: In this possible scenario, would you have the trust company making an interim appointment subject to approval by the ministry and then the ministry giving whatever it is called, concurrence, approval or whatever?

Mr. Crosbie: No.

Mr. Boudria: There would be another step?

Mr. Crosbie: What we would really prefer under this recommendation is that if they propose to appoint a person, they would submit the information first. It is not so much a question of approving the person as not disapproving of him.

Mr. Mitchell: What you are talking about is the situation where they can appoint somebody prior to the retirement age, say, of their chief financial officer or chief executive officer; six months ahead they make the appointment effective such and such a date, assuming by that time they have the clearance through.

Mr. Boudria: That is not very practical. What happens if the guy walks out the door and gets run over by a bus one morning? It is rather Utopian to think that everybody can be trained and approved before a takeover is necessary. Even the most important elected position in the world does not work that way.

Mr. Mitchell: It does not take long to milk a company.

Mr. Chairman: Of course people die from heart attacks, but we are saying there should be some mechanism whereby they can review his character.

Mr. Boudria: Yes, I agree with that. We are not disagreeing. The only thing I am suggesting is, in order to make this more practical, could there not be a mechanism by which a person is appointed in the interim in a similar manner as presumably it is done now by the board of directors, subject to review by yourself, which confirms a permanent type of appointment, and that the trust company must notify you within 48 hours after those positions become vacant or something like that, so that it has to be done in a relatively quick type of pace? Is that practical?

Mr. Crosbie: In an extreme emergency, we would have to be able to accommodate this, but I would just remind you that I dare say even the chief executive officer takes a few weeks' vacation from time to time and the company manages to get along without him for two or three weeks or maybe even a month.

What we are talking about is somebody filling out a piece of paper which outlines his career history and whether or not he has criminal convictions or anything like that, something a person might be able to do in a matter of moments or an hour at the outside. If you are talking about an emergency, we could surely accommodate that, review it and say: "There is nothing wrong there. Go ahead." You would be reasonably certain that there are no serious problems. Even in an emergency, I do not really see a problem arising that would justify not having some sort of approval process.

Mr. Boudria: The only thing that worries me is, I am looking at other parts of your ministry. The area I happen to be a little more familiar with is the real estate area, where people will apply for a real estate licence. Lately it is kind of quick. It takes about only four weeks to approve them now but earlier on this year and last year it took up to two months.

Mr. Crosbie: That is because several thousand real estate licences come due on the same date. You are not trying to get one person cleared through the system; you are trying to clear through 20,000 or 25,000. How many real estate agents do we have in Ontario?

Mr. Boudria: I do not know. I was going to ask you.

Mr. Chairman: Probably 20,000.

Mr. Crosbie: That is the problem. It is the volume there. I agree you can get behind in a situation like that, but I do not think that is comparable to what we are talking about here at all. There are only 90-odd trust companies in the province. How many of them are going to have their chief executive officers drop dead on the same day?

2:30 p.m.

Mr. Boudria: All right. Again, we are talking about jurisdictional stuff here. For Ontario to approve the chief executive officer of a trust company located in British Columbia, how realistic is it that we will ever achieve that, apart from all the constitutional problems and everything else?

Mr. Crosbie: If it is a condition of their licence to carry on business in Ontario, I think they will comply.

Once again, we are just asking them to submit evidence that the person is reasonably acceptable, and I would think in the vast majority of cases there should be no difficulty at all. It is almost a pro-forma application or submission, the type of declaration that the member for Riverdale (Mr. Renwick) has mentioned from time to time, some certification of fitness that would outline his career, presumably his lack of criminal convictions and that sort of thing. It would allow us to look at it quickly and say, "That is fine."

We are not going to start saying things such as: "Is this the best CEO they could have hired? We know three other people who are better qualified whom they might have hired." We are not going to get into that sort of process.

Mr. Chairman: It is their business.

Mr. Boudria: Okay. As long as that is clear for the record and it will reflect itself in the bill when it comes--

Mr. Chairman: Is there anything further on G-1? If not, we will move to G-3, recommendation 2, which states: "An audit committee should be mandatory for all loan and trust corporations consisting of a majority of outside directors who are not officers or employees of the corporation."

I think we did have some discussion on that when the group came up in front of us recently. Are there any further comments by the members?

Can the ministry take us through how that really would work?

Mr. Crosbie: Basically, we are saying there would be a committee of the board of directors. If it is a small company with five directors, then three of them might be the audit committee and two of them would be outside members--they would not be officers of the company--and the audit committee would carry out the normal functions of an audit committee. Basically, it is the

idea of having the relative independence of the outside directors in a majority position on the committee that is making the decisions of the audit committee.

It is similar to the next recommendation, the investment committee; you could almost look at them together. This runs in conjunction with the previous recommendation that there be rules for the approval process of loans, and if the process requires that loans of a certain size be approved by an investment committee, then this is the type of committee we are talking about. Once again, we are saying that the majority of the members of the committee would be outside directors.

Mr. Chairman: Is there any further discussion on recommendation 2 on G-3? If not, we can move on to G-4, recommendation 3, which is similar: "An investment committee consisting of a majority of outside directors of the corporation should be appointed to assure appropriate standards and levels of authority for all loans and investments made by the corporation."

Mr. Crosbie: My only comment on this is that I believe the committee has already gone on record as saying that the comment of Royal Trust should be rejected and that the committee must be a committee of the board of directors of the trust company, not of the holding company.

Mr. Chairman: There being no further questions on recommendation 3, we will move to recommendation 4, which states: "The board of directors should be required to review specific financial data regularly to assist early detection of problems."

Mr. Renwick: I do not know why the hell we should be telling them they have to do that. It seems odd that a board of directors should be required to be told that.

Mr. J. A. Taylor: That is the comment of the Regional Trust Co. What technique will the registrar or whoever use?

Mr. Crosbie: This was specified in the regulations. In the body of the report, on page 31, I would point out that the type of thing we are talking about is matching and mismatching, matching sensitivities, nonperforming and default loans, mortgage arrears statistics and delinquent receivables.

I can agree with committee members that these are the logical things for the directors to be looking at. I think some of our recent experience has demonstrated that some directors, perhaps many directors, do not become involved in this matter. I think if we wanted to move to some sort of system of certification, this would be an appropriate way of doing it. One of the things they would certify would be that they had done this sort of thing.

Mr. Renwick: I do not have a problem with that part of it. Using a certain amount of mental agility and pretending I am talking about G5 when I am talking about G1, I would be very interested in making sure that when notice is given of an election of a new member of the board of directors, that you might consider

a carefully prepared memorandum to that director from the registrar, couched in whatever way you want to say it without intruding on him, about what the matters are, pointing out to him the pertinent relevant sections.

Of course the whole act is relevant but I meant their obligations and so on, pointing out matters which have been of concern over the years, indicating to him in a polite way what you consider his responsibilities to be, particularly if the suggestion finds some merit about compliance certificates and so on, what he would be required to do, so that he is not the new boy on the board who does not know what the hell he is doing there but pretends he does and gets locked into rituals that are not satisfactory.

In that sense, that might be a useful way of approaching the question. I do not think you have to approach directors with kid gloves; that was not my particular view. I just want to keep some sense of distance between the registrar and the people on the boards, from the point of view of what the registrar can legitimately or otherwise do.

Mr. Mitchell: I just find it unworkable the way it is. I tend to support what Mr. Renwick has said. We do not know what you are going to have. Although you used examples as on page 31, these things can change over a period of years.

We talked about this yesterday. Someone mentioned there are training seminars for people who are directors; if we are going to be contacting directors and informing them of certain responsibilities they have and so on, to start trying to throw in this just gives me some degree of difficulty as to how you do it with some semblance of order, if you will.

It strikes me that when new directors are appointed you perhaps provide them with a copy of the Loan and Trust Act highlighting all the responsibilities of the directors and those changes we have made, and saying that out of this comes the fact that you had better know everything that company is doing in every direction.

2:40 p.m.

Mr. Chairman: Before we carry on: Was there anything in the select committee report on this particular matter?

Mr. Crosbie: I do not see any specific recommendation at this level of detail. There is a general recommendation of the select committee at page 92, 13.15: "The act be amended to provide expressly that the board of directors shall manage or supervise the management of the affairs and business of an Ontario corporation."

I think this report usually kept to more general language as to the duties, without specifying the level of detail that was suggested in the white paper.

Mr. J. A. Taylor: I appreciate the statutory provisions

which might outline a director's duties, but I am just wondering how far you take those in an administrative sense, so that in effect, as a director, you are gathering in the registrar in your activities to the degree that I suppose if one is negligent the other is too.

How close a relationship do you establish in terms of a responsibility on the part of the registrar to lecture or require from the director some level of performance; to coach him, instruct him? How far do you carry that before the director says, "I am sorry I did that, but you did not tell me I was not supposed to"?

The kind of relationship you are going to develop may not be a very healthy one for either the registrar or the director. It is that kind of thing that would trouble me.

Mr. Crosbie: I can see that argument; if you undertake to tell them certain things, then presumably what you do not tell them you do not expect them to do.

Mr. Renwick: Perhaps we should establish a community college course for trust corporations; give them certificates.

Mr. J. A. Taylor: I notice a comment on regional trust companies, your recommendation that it is "inappropriate for the regulator to tell the directors what they might be thinking about."

Mr. Renwick: The point does not alter the fact that the introduction of a new member on to a board of directors that has been established for a considerable period of time is like the new boy at the old school: he is supposed to keep quiet until he has absorbed the rules and traditions. Very occasionally you get a brash new boy who is prepared to raise some questions or want to know what his responsibilities are. I do not know how you bridge the gap, but the passive new boy is a much more common phenomenon than the brash kid on the block. That is really bothersome, because if there are matters of routine and tradition before a board, somehow or other the questions are not asked.

Mr. J. A. Taylor: I do not find anything wrong with a memorandum that might go out from the registrar to all new directors indicating, even if it is in a pedestrian way, what is expected of them, that there are some duties and that there are ramifications and legal consequences to a director's involvement in a company. I guess that is like a new member of a municipal council or some other group; it is a matter of assisting him.

Mr. Renwick: The way we deal with new members here.

Mr. MacQuarrie: And can they get snowed!

Mr. Renwick: You really get a lot of assistance around here.

Mr. J. A. Taylor: I stopped short of that.

I can understand that, just as a matter of not only courtesy

but also putting one on notice, there are some legal responsibilities that person has; but to have to check in at every move if the registrar or whoever--

Mr. Crosbie: I would like to clarify this. There is no intention here of the board reporting to the registrar on a regular basis if they have done these things. This was just a specified standard of performance for a board of directors so that at some subsequent point, if you were ever challenging the performance of the directors, you would have some basis for saying, "Did you do this"?

Mr. J. A. Taylor: I am sorry. I have probably overstated. Give the director some sense of ability, independence and skill. I am not suggesting he should not be assisted if you feel he is pretty green. It would bother me that you are going to be too instructive.

Mr. MacQuarrie: This question of the board of directors is one that troubles me. In many of the major corporations you have an executive committee of the board that, in effect, supervises the operations of management quite closely. Its powers vary from corporation to corporation.

Sitting on the board are representatives of major corporations, who fly in. They get their director's allowance for the day, their accommodation and the rest of it. They are occupying a chair for the day. They have their own concerns with their own firms and so on, and sometimes they are appointed to the board simply to give the board the appearance of class, if you will. That is for the want of a better word, Mr. Crosbie, and is as good as any.

Their actual participation in decisions affecting the operations of corporations tends to be minimal. The decisions are already made. They come in and act as a rubber stamp, "Boom, boom," and away they go. They are off back to their own corporate base on the next plane. This does not take anything away from those individuals, except they tend to accept their roles as being the roles they play rather than acts of interested participants in the affairs of the corporations of which they are directors.

This takes me back to the whole question I raised earlier, which is to try somehow to get on some of the boards of these corporations public interest directors whose directorships might be confined to the one corporation and who might be interested to actually take some specific role.

At least some of the directors of major corporations hold one director's qualifying share and that is it. They are in and out and their voices just become one chorus of "ayes" to everything the executive committee puts forward.

2:50 p.m.

Mr. Crosbie: In commenting on that, I think it is dangerous to analogize to boards of other types of corporations where they are dealing with the shareholders' assets. To that

extent, you are representing third parties. However, it is not quite the same as a loan and trust corporation or a financial institution where the assets it is administering are the moneys of other people. In the other circumstances, if the company chooses to have the director there for cosmetic purposes, it may not be too important.

I thought one of the thrusts of the white paper that had more or less been endorsed by the committee was this sense of trying to make the board of directors accept responsibility as trustees of funds that have been invested with trust companies. In that sense, it might be useful to indicate clearly in the legislation the level of responsibility that is expected of them. They should not be flying in, rubber-stamping a set of minutes and flying out in the afternoon. This is the sort of thing that is their responsibility. Maybe there is another way of doing it, but that is certainly what we were trying to do.

Mr. MacQuarrie: Having witnessed in a vicarious way the operations of some of these boards of directors, I sometimes get a little bit leery of them. None the less, if the legislation were, as you suggest, clear as to their duties and responsibilities and what was expected of them and if it were supplemented by a letter from the registrar indicating their duties and responsibilities, that might tighten it up in this area of the commercial field.

Dealing with major commercial enterprises, and some of our loan and trust companies can very well turn into those, I am afraid your guidelines have to be very stiff and very strict and very well defined or else you are into the executive committee decision where it is calling the shot.

Mr. Thompson: I view this as not really involving the registrar but really being there as an assistance to a director. The thrust of that recommendation is directed to management to deliver this information and to report to the board.

We are assuming the board will be asked to approve mortgages or something along that line, a whole portfolio. If you look at some of that information, it is just as pertinent to know how the company sits in mortgage arrears and what has been the performance. We were looking at it from the point of view of being directed to management and saying, "You will have to provide that to your board along with everything else so that it can make an informed decision."

If you are a director of a company and you ask for this information, what authority would you have to compel it if management says it does not have it? We were looking at it as an assistance to the director. We are saying you are responsible to manage this company and you come from all segments of society and we were just trying to outline parameters of things that should be available to a board.

Mr. MacQuarrie: I have no real quarrel with that. I think it is a good idea. It is a question of how the thing is actually brought into practice in terms of the major institutions. In the minor institutions, for want of a better term, it might be

a lot easier to do. Some people who are directors of major financial institutions, including the banks, know as much about what is going on in the banks as I know about what is going on in the Vatican.

Mr. Renwick: I was there this summer.

Mr. Chairman: The bank?

Mr. Renwick: No. The Vatican.

I do not know quite where we are headed on this, but the need, first of all, to inform a new director, without being polite, about the special nature of this corporation and the responsibilities there, in my mind is not paternalistic at all. It is simply to say: "You have accepted this position. You have to understand it." The English language is quite capable of saying that the fact that we draw attention to these particular factors is no reason he should not be looking at all the other factors that are involved in it, but we want him to know that we are very interested.

If the compliance certificate and other safeguards are required, then I think one should be able to tell them in a synoptic way what they may well be expected to do from time to time in satisfying the public interest of compliance with the act in those various matters.

Since the chairman of the Toronto Dominion Bank was here with the Canadian Bankers' Association, I think it would be helpful if our research people, assuming they were able to get through to them, were to find out from the chairman of the Toronto Dominion Bank and from, say, the chairman of the Canadian Imperial Bank of Commerce or whatever other bank and from the chairman of, say, National Trust and the chairman of Victoria and Grey, what they do when a new director comes on.

I am not asking all the details of their post, but do they provide them with a memorandum or do they have anything of assistance to let them know what the hell they are supposed to do, or is it just the usual old school tie operation of some kind of process of osmosis that goes on and nothing ever gets asked that is of a critical nature? It would be interesting to know what they already do in that field.

Then as far as ongoing matters are concerned, I am quite upset if the 94 companies that are reporting to the registrar do not have the backup data available on a particular mortgage transaction or on the state of arrears or what they are. I do not have all that much knowledge of it, but I do know that on the committee of a board I sat on at one time it was not unusual to make a request on a random basis to see file X on a mortgage investment or three files. Nobody knew which ones they were; they were all numbered on the list and you asked to see the file. It was a sort of subsidiary check you made. It is not that you then studied the file, but you saw that the necessary pieces of paper were kicking around in the file and so on.

Certainly we always had a report on the question of mortgages that were in arrears, the delay in connection with them, at what point they were turned over to solicitors for collection, what inquiries they had made about the possibility of the mortgage's being reinstated and so on. I am talking mainly of a portfolio of residential mortgages.

I would be very upset if the state of the trust business is such in Ontario that those things are not normally available in practically all companies, and I just feel a little bit odd. If that is the case, if that kind of basic information is not available, then certainly we have to say something about it; but I do not want to be saying something about that kind of elementary board responsibility unless we are certain there is a vacuum there.

Mr. J. A. Taylor: Get Jim Breithaupt to tell us how it works.

Mr. Chairman: Yes. Take us through it.

Mr. J. A. Taylor: Come on, Jim. You mentioned that you are on a board of directors. Is that how it functions now?

Mr. Breithaupt: I think it is up to the individual director to find out what his or her responsibilities are. Certainly at the present time there is no material generally provided by the registrar or the superintendent, however it might be. I would think that having a variety of material available and sent to newly elected directors would certainly be useful; I think it would be a very good idea.

3 p.m.

Mr. MacQuarrie: It is like an information package for new councillors.

Mr. Renwick: You cannot really consider the concept of public interest director in isolation from the other directors. They may represent different interests, but they basically all have to come at the problems the same way. They are kind of a public watchdog and unless the directors are equally informed about what is required of them, a public interest director cannot be sitting in there teaching lessons every day as surrogate for the registrar. That is not the role of the public interest director.

It would be interesting to find out what, if anything, is done with a new director coming on to a bank board or trust company board. Maybe nothing is done. If so, then it would make some sense to make some recommendation about it, if there is some kind of an indoctrination process about what to look for. I do not think the most experienced businessman in the world who is called one day and asked if he would be interested in sitting on the board of one of the big banks, is necessarily automatically knowledgeable about bank requirements.

Mr. Chairman: I am sure the researchers can dig out that material for us.

Mr. Renwick: I would think the Canadian Bankers' Association would be co-operative in giving answers to that. I think the trust companies association would as well, particularly since we had the chairman of the Toronto Dominion Bank and the chairman of the board of National Trust here the other day.

Mr. Chairman: Fine. We might be able to get that information on Thursday, if we get back to the white paper by then.

There being no further questions on recommendation 4, we should move on. I think that is it for "Management and Organization."

Mr. Renwick: What about page G-6?

Mr. Chairman: I am sorry, did I miss that?

Mr. Renwick: I am concerned about pages G-6 and G-7.

Mr. Chairman: Oh, yes, the miscellaneous one. I am sorry.

Mr. Renwick: Most of the recommendations of the select committee were basically to put into the statute what was already in the Business Corporations Act, which had taken up a good part of the time of the select committee prior to dealing with trust companies and so on.

I might make a couple of comments. The question about transposing into the act the provision that "the board of directors shall manage or supervise the management of the affairs and business" of a corporation was that the old Corporations Act simply said they "shall manage the business and affairs." Of course, with the managerial revolution, that was not taking place. The boards were not doing that. That is why we added the alternative words, "or supervise the management of the affairs and business" of the corporation. I think it certainly should go into the act.

The item above that, relating to the traditional and ancient power of the shareholders being able to reject the bylaws and so forth, was again part of the managerial revolution which extracted from the shareholders and we cannot fight that battle again on that question, so there is no problem with that going in.

It is the same with the passage of the bylaws and so on. There are still problems. The fact that a borrowing bylaw has to be passed by a trust company that exercises borrowing powers is of no great significance if it is 30 or 40 years old or whatever it is. Those battles have all been talked about and fought and nothing ever takes place to change them and nobody has come up with any real way to change them.

The one that really concerns me is item (d), "A statutory duty of care for the directors and officers of Ontario corporations be contained in the act." My question is a simple one. We fought long and hard about the question of the wording of that standard of care in the Business Corporations Act. Can

somebody tell me just where that is recited? It must be recited somewhere in the select committee report.

Mr. Nigro: Page 92.

Mr. Renwick: The exact wording of the statutory duty of care--

Interjection: It is on 85, I think.

Mr. Renwick: Yes. On page 85, it says, "Every director and officer of a provincial corporation shall exercise the powers and discharge the duties of his office honestly, in good faith and in the best interests of the corporation, and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances."

A number of us tried to get that word "person," in the second last line, changed to "director," so it would read, "and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent director would exercise in comparable circumstances." We were quite unsuccessful in raising the duty of care, which we thought semantically would have been done, had we introduced that other word.

My concern again is this. Is it adequate for us to put into a trust company act simply the provision with respect to the standard of care of a director of a business corporation or, because of the trust nature of the assets which are under the management in control of the board, should the standard be higher than for a business corporation?

I have already disclosed my bias. Personally, I think it should be higher. I am not certain how the exact words would go. I think it should be higher because of the important, peculiar and special nature of trust corporations, as reflected in sections 115 and 116. This means that all the assets under their control, except their undivided profits, are, for practical purposes, subject to a trust.

That is a standard which, somehow or other, I want to get across to the directors of these companies. You can talk all you want about self-serving and all the rest of it, but if at the very inception they understand they are dealing with trust properties, and they are trustees for those properties, then under our system of law surely to God that would act as a brake on anybody who is there. I do not know how you do it. Basically, I think you do it through the directors.

My own view, apart from some supplementary supportive things which we can do--as we have been talking of as we have gone through, about reinforcing that aspect of it so that people understand it--is I think then you put in a standard of care which draws that specifically to the attention of the directors in the duty of care which is imposed on them as directors of a trust company and then they float by themselves.

If they breach it, they are to be accountable for it. That seems to me to be the most effective way we can deal with what happened in Crown Trust, Greymac Trust Co., and the other trust companies.

3:10 p.m.

Mr. MacQuarrie: It has been a long time since I have had occasion to look at the Bank Act. Does the Bank Act prescribe any additional or special duties and responsibilities in respect of directors of a chartered bank, apart from their normal corporate responsibilities set forth in the Corporations Act?

Mr. Crosbie: I do not know.

Mr. MacQuarrie: I know in the Bank of Canada the main requirement is that you be Liberal--temporarily. So in that instance, in respect of banks, we have no special requirements.

Now it is a question of how we devise special requirements or additional duties for directors of trust and loan companies. Do you feel, Mr. Crosbie and Mr. Thompson, that additional, special duties should be placed on directors of this type of corporation, duties of care and responsibility?

Mr. Crosbie: I think there is a special duty of care. As I said before, when I was suggesting there should be a recognition of the distinction between the type of assets being administered by a trust company and those being administered by a normal commercial operation, I think the fact that the bulk of the assets you are talking about are other people's money creates a special duty of care.

I find it rather interesting in commenting on the select committee's report that the committee cites on page 85 a decision of the court whereby one of the tests is: "A director need not exhibit in the performance of his duties a greater degree of skill than may reasonably be expected from a person of his knowledge and experience." I do not know whether the converse of this applies: that if a person does have superior knowledge and experience and is a director of a trust company, this becomes the level of competence he is expected to exercise in making his judgements.

It seemed to me that the committee in reaching its decision--and I think this is what Mr. Renwick was perhaps alluding to--by moving to the test of a reasonably prudent person has set a lower standard than the test of the level of skill that a person brings to the board. I would think that in normal circumstances persons appointed to boards of directors might have a higher degree of skill than the average man in the street or the reasonably prudent person. I think that is whom we are talking about.

Mr. Renwick: That was certainly the type. We wanted the word "director" in there instead of "person" and we were unsuccessful. I think all of us who tried to fight that battle felt we were settling for a lower standard of care than was the minimum that should have been required in a business corporation.

I would certainly like to have some reference in there--either in the first part of the conjunctive sentence or in the second part--to the trustee nature of the deposits, guaranteed certificates, and estate, trust and agency business in the most facile and direct way it can be put. I want to get in there the concept not only that they are directors of a corporation but that they are trustees of a trust with respect to depositors' funds.

Mr. Crosbie: I would think one might interpret "in comparable circumstances" as meaning the circumstances in which you are managing a trust company. But I would be inclined to agree that, if this is what "comparable circumstances" is meant to say, we should say it.

Mr. Renwick: I think we have to get the sense that they are directors and they are trustees. It has often been said in a facile way that directors somehow or other are trustees for the shareholders in the early days, but that is not so.

Here we have a statute that says the deposits are trust funds, the guaranteed investment certificates are trust funds, and the estate, trust and agency business is trust funds. When they are dealing with those they have to understand that they are subject to the court requirements of the standard of care that a trustee is required to exercise, which is, I suppose, the highest standard known to our world, particularly in relation to self-dealing and particularly in relation to the degree of care they must exercise.

Mr. MacQuarrie: I think I am in sympathy with most of it, but there is a thing that troubles me about it. I agree that we need not tie ourselves to those at the federal level, but a director of a bank exercises very much the same sort of function as a director of a trust company in so far as the nature of the assets under administration is concerned. I was surprised to find the Bank Act did not have any extra duty or standard of care placed on them other than what is placed on a director under an ordinary corporation.

I agree with Mr. Renwick that, in view of the peculiar nature of the business and the fact that they are in the position of trust, not only on account of depositors' money but also acting, in the case of trust companies, as trustees, they are subject to the Trustee Act. My main problem is to try to express the additional duties that are placed on them. Reasonably, it can be expected from a person of his knowledge and experience--those are words, as far as I am concerned.

Mr. Chairman: Any further discussion on the miscellaneous section, G-6?

Mr. Renwick: I would like to labour the point on another occasion. Lawyers for years were assumed in Ontario to be entitled to keep the interest on their trust accounts, the moneys they held in their trust accounts and the interest that was earned on those trust accounts, which could be called the spread. Lawyers in

Ontario assumed they were able to transfer that interest to their personal accounts at the end of the year. When faced with this question, the House of Lords in England simply said no. They brushed aside all such arguments as: "How do you account for all the people who put their money in? You have it overnight or for a week or three weeks or something." They said no.

What happens now is that in the case of every lawyer in Ontario at the present time the money is transferred to whatever they call it--the Osgoode Hall Trust Fund or whatever it is.

Interjection.

Mr. Renwick: No. Nobody could devise an accounting method for paying it to the people whose money was in there earning it, so they said: "You cannot keep it. You have to put it somewhere." A substantial part of it goes to finance the legal aid fund.

The crucial part of this act on that point is stated this way, "and profits resulting from the investment or loaning of such moneys in excess of the amount of interest payable thereon," the company is entitled to retain. We have a statutory breach of what would otherwise be the obligation of the trustee. We have enshrined that in the statute. I think somebody has to be told that is so. That is a very special dispensation of this assembly.

There may be all sorts of other reasons such as, you cannot have a trust company in Ontario, this is a gimmick to get around the banking power and so on. There is some possibility in that and it may well be so. If we took it out, it would be a problem. The guts of it, whether you like it or not, is that concept. The world will not come to an end with some minor changes in that to reflect in the duty of the directors their role as trustees of those funds.

3:20 p.m.

I would like to see some legislative thought given to wording that provision and putting it in the statute, being part of some kind of memorandum the registrar would draw to the attention of a new director. Down the road the guy cannot then say, "I did not know or I did not understand what the hell I was getting into," or pretend he had done what he thought he had to do and try to escape free on it.

Mr. Crosbie: On the point of the drafting, we have been giving some careful thought about this, but we have some concern about creating too high a standard of care or frightening people away from accepting directorships in trust companies because there is some sense that, if they go in there, they have some super level of care. We would have to be careful to make it clear we are not requiring extraspecial abilities per se, but rather the responsibilities in the trust relationship is what is being emphasized here, whether you come in and say you have a lawyer on the board of directors or an accountant, and their standard of care automatically becomes some notches higher than if it is just, say, a businessman.

Mr. MacQuarrie: I was thinking the corporation itself was standing in the trust position and administering the trust funds. Rather than incorporate in the statute specific additional standards of care which could tend to discourage people from becoming directors of this sort of company, maybe the best way around it would be if they were advised at the time they became directors of the nature of the business and of what would be expected of them as directors against the background of the standard duties of a director, because a director has to use his best knowledge and ability in carrying out his role as a director. If it is brought to his attention he is a director of a trust company and the peculiar nature of the trust company, then the standard to be imposed on him is simply intensified. That should be brought to his attention.

Maybe we do not need anything specifically to outline the additional onus placed on him because possibly it is placed on him in the normal course of events.

Mr. Renwick: I want to address the question of scaring people off. That was raised with us at the time we put the original standard of care in the act. We were going to scare them off. There was not a single, solitary director anywhere who was scared off.

My second response to that is I do not think it hurts to draw to their attention that the corporation is the trustee of the funds that are there. I agree with the distinction the member for Carleton East (Mr. MacQuarrie) made. They do not automatically become trustees. They are directors of corporations which are impressed with the trust with respect to those funds. I do not give a great deal of credence to the fact that many directors are going to resign or many are going to refuse to accept appointments because of our making clear to them the responsibilities the corporation has.

Mr. Crosbie: I agree. It can be done in language that leaves that scope, even if it does not scare them off. We have to be careful how we frame it.

Mr. MacQuarrie: The point is well made, well taken, and it can be looked at. I thought possibly it might be covered under the normal duties of a director.

Mr. Chairman: That is quite a detailed little discussion on the miscellaneous section. Possibly now we should move on to financial standards and controls. On page H-1 the first recommendation states: "The registrar should be given authority to control borrowing from the public by determining the assets to be included in the borrowing base and the authorized borrowing multiple. Borrowing multiples should vary with proven experience and resources from a minimum of 10 times the borrowing base to a maximum of 25 times."

Mr. Breithaupt: Again, Mr. Chairman, is this simply a statement of what is, in fact, the case now? If the use of the word "should" in both cases means that these things are not now in place, what is the system in place and what are the powers which now exist?

Mr. Crosbie: The problem is that under the act there is a general definition of how you arrive at the borrowing base. It is described in general language. When you get down to the specifics of various types of assets and liabilities, it can become quite a chore to determine whether something is in or out.

There does appear to be a need for clarity. To provide more certainty in this area, we were proposing some regulatory process by which the types of assets and liabilities and how they would be handled would be set out in the regulation.

Mr. Renwick: Is there any analogy between this determination and the determination which is made under the Corporations Tax Act for paid-up capital tax? Is there any analogy between the definitions? I am just curious.

Mr. Thompson: I do not know offhand. I would not think so.

Mr. Renwick: It might well be a different base?

Mr. Thompson: The valuation of the capital in the corporation is only one element of the borrowing base.

Mr. Renwick: Yes, but I think it is in the paid-up capital tax.

Mr. Thompson: It may well be.

Mr. Crosbie: Subordinated notes are included in here, and I do not think they would be included--

Mr. Renwick: I have not looked at it for a long time, but it may well be that the Treasury office has had some reason, some base, to give more attention to the paid-up capital tax in a defined way. I may be wrong, but my indication is it was not some kind of a strict basis because, naturally, they were interested in maximizing the tax that was available under the definition within the limitations of the integrity of the term.

Anyway, that is one point. The other point is that I think basically we have covered a goodly part of the discussion which lies behind this in relation to pre-incorporation and annual certificates and intervention powers. I do not quite understand the extent to which we are giving the registrar what he has not already got.

In a sense, you are the operative person in any event, are you not?

Mr. Thompson: Well, I approach the Lieutenant Governor.

Mr. Renwick: Yes.

Mr. Thompson: But I think what we are saying here is that we are putting a cap on the borrowing multiple of 25 times. That is something new.

Mr. Renwick: That is the only real point about this.

Mr. Thompson: Yes, that and the base of 10. We are now saying it should be in the legislation. There is no statutory maximum.

Mr. Renwick: My only point would be that a cursory reading of this by an outsider would not make that clear. No one would know from reading it that key was the minimum and the maximum. They would think we were giving the registrar something else. I guess all I am saying is that there could be a little clarification of exactly the fact that those are the maximums and minimums which are not there. I do not have a problem with that.

3:30 p.m.

Mr. Chairman: There being no further discussion on recommendation 1, we will move to H-3, recommendation 2, which states: "The registrar should be entitled to prescribe maximum borrowing costs and commissions payable by a corporation from time to time in the light of prevailing market conditions."

Mr. Crosbie: Just for the assistance of the committee, we were directing our attention here to circumstances where excessive commissions and other costs related to borrowing are incurred to attract deposits. We have heard examples of situations where a company may have a liquidity problem and may wish to attract capital or deposits in a hurry. There are also situations where a company does it over extended periods of time and creates an excessive cost to its borrowing. We were concerned both about the aspect of its having incurred an excessive cost to acquire the deposits and also about the fact that it was perhaps acquiring more deposits than it could properly manage.

One of the techniques the registrar has used indirectly when a company is in difficulty with its financial situation is to restrict its borrowing. The usual way we restrict the borrowing is to reduce either the commission or the rates it is paying on its money, and it automatically dries up its source.

Mr. Breithaupt: How often would you be required to do this and how quickly would your intervention deal with the problem that may have grown up?

It would appear from the comments made in response that certainly those half dozen who have referred to this point think it is up to the management of the business to set and deal with these particular rate changes. I would expect that by the time you knew about company X offering an extra point higher in interest than the market that day, it would have received whatever funds it required and would have sorted out its particular mismatch, if that were the case. I hardly think you are going to be in a position or have the staff to monitor almost hourly what rates are being offered or how it is being done.

I think we should comment to the effect that we have not had the system explained to us but, by the time the bill comes to the House, some of the bugs will be out of it and you will be able to tell us how it works.

Unless somebody else has some other idea, I think that is all we can do at this point.

Mr. Chairman: I agree, and I think the members agree.

Mr. Renwick: Perhaps the research people can put in a synoptic paragraph on the nature of that system, but that may be too difficult a problem.

Mr. Chairman: With that, we will move to I-3, item 2: "All loan and trust corporations should standardize their record keeping and reporting."

Mr. Renwick: Again that is one that is easy to say and everybody could rephrase it more appropriately. I think the goal should be, because of the nature of the business, to maintain as high a degree of standardization of reporting as is possible but, when we have a developing industry, particularly with the changes we are going to be making, say, in commercial lending and in the increase of consumer spending and other things like that, there is the way it just develops. I just do not want to be thought to be naïve.

Mr. Crosbie: Once again I would say this is an area where we would have to be in close contact with the Trust Companies Association of Canada and, for that matter, the chartered accountants. I think we would want their advice, and they have indicated their willingness to provide it.

Mr. Renwick: And you need that, otherwise you are not going to be able to compile the kind of statistical information that will be of any meaning for annual reporting purposes.

On I-4, if keeping the records on the premises of the corporation is a problem, we should certainly close that door. I do not think there should be any fooling around about that.

Mr. Crosbie: If I recall correctly, Mr. Kronis was speaking about the problem he was involved with in Astra/Re-Mor. You may recall there was some difficulty at one point in time in locating some of the records that were being held in a lawyer's office at some place remote from the office of the company. Maybe that would be a good point to incorporate into the act.

Mr. Renwick: I think it is extremely important that it be forcibly explained that nobody, no matter what his relationship, should have the damned records except on the premises of the company. Otherwise, you abort the work of the registrar.

Mr. Thompson: I think that is a problem in isolated instances, but I think only a very minor amendment would be

needed. I do not know of any corporation doing business today that does not keep its records on the premises.

Mr. Renwick: You will not know until you go and look for them. However, I think the act should reflect it, and I think the penalty should reflect the importance of it. There is no other way to deal with it.

What is your intention about quarterly or other reporting?

Mr. Thompson: I would like to explore further the arrangement that the Canadian Bankers' Association has to find out how that operates. If this can get into some form of reporting, the more information the better.

4 p.m.

I am not sure who should disseminate this. I think the problem you have is that most of this information to provide a quarterly financial reporting system there is going to be heavy reliance on the ability of the company to produce it. It obviously cannot be subject to audit, neither can it be subject to examination by governments on the accuracy of that information, so it is very important that the statistics that come up are credible.

I can see the Canadian Bankers' Association, which I think was recognized in Bank Act legislation almost 100 years ago, disseminates some of this information and when it was doing it for about six companies it was relatively easy. However, I think that whole area should be explored.

I am very much in favour of it, provided the information is credible.

Mr. Renwick: I am interested in two aspects of it: what you are going to get and then what could be made public. Whatever is within the feasibility of data processing and computer systems at the present time with respect to providing to you monthly statements, if necessary, is one thing.

Second, although they kick like steers, I believe the companies listed on the exchange are required to provide quarterly statements now. I am not certain of that.

Mr. Crosbie: Certainly with the reporting system we are setting up we know it is feasible. We have not really looked at it in those terms, but I think this is an area, as the registrar has indicated, where we are going to have to see what we can do.

Mr. Renwick: They can overcome the unaudited part.

Mr. Crosbie: Yes.

Mr. Renwick: People will understand that an unaudited statement does not necessarily mean that it is not accurate. I think it is very important that we deal with that topic in our report.

Mr. Chairman: Is there anything further on the miscellaneous section from any other member?

There being none, we will move on to the next section, which would be enforcement, the J section.

Item 1: "New safeguards and remedial actions are proposed where the additional self-policing responsibilities are not adequate to protect the public interest, including in particular:

"The investigative capability of the ministry respecting financial institutions should be substantially strengthened;

"A rehabilitation capability should be created for monitoring and enforcing a course of action directed by the registrar with a view to restoring a corporation to full compliance with the act and regulations, all designed to achieve rehabilitation without the registrar taking physical possession, and

"Where rehabilitation is not possible for any reason and taking possession is necessary, the registrar's authority should be strengthened and his options increased."

Mr. Renwick: Is there a mistake in our report or is that supposed to say what it is saying, that "no new section be added to the act"? Is that a typographical mistake for "a new section should be added"?

Mr. Thompson: I do not know, I was just the reader.

Mr. Renwick: I would assume that is a typographical error. I think it should be a new section.

I do not know that there is much to say about that. I do not think anyone is going to object, if you can devise it. We have talked about the investigative capability of the ministry; we have dealt with that.

I certainly agree that the intermediary possibility of rehabilitation should be created, because in fact you have developed procedures and methods for rehabilitation. You already have agreements between some trust companies, have you not?

Interjection: Yes.

Mr. Renwick: Sterling is managing one.

Mr. Thompson: District. Yes.

Mr. Renwick: District, and somebody else is managing something else? This is a technique that is designed to return the company to its former state and ownership and direction, is it not?

Mr. Crosbie: Yes. I think there are developments at the federal level too. The whole organization of the Canada Deposit Insurance Corp. has been affected by our recent experiences, and I think they are gearing up to be more responsive.

Mr. Renwick: And to develop an actual rehabilitation process.

Mr. Crosbie: Yes. I hope so.

Mr. Renwick: Are there any other techniques you use, other than those management agreements, at the present time?

Mr. Crosbie: We have rehabilitation in an existing company. We have had situations where we effectively took over the board of directors, with the concurrence of the owners, and put our own designees in to run the company until it got into a position where we could dispose of it. But that was another one where we did it with the concurrence of the owner. Now, if the owner had been difficult--

Mr. Renwick: I assume what you are talking about are statutory changes to give effect to that.

Mr. Crosbie: Yes.

Mr. Renwick: Surely to God now you have got all the authority you need. Should your authority be strengthened and your options increased where rehabilitation is not possible? Was the 1982 act not pretty effective?

Mr. Crosbie: Not with respect to what you do with the company when you have reached the point where you say, "This company cannot be rehabilitated." You are sitting there, then, with certain assets and properties on your hands, and I believe under the current act your options are either to turn it back to the original owners or to have it wound up under the Corporations Act. A third option may be to dispose of it by some other method, a court order or whatever, to permit the assets to be handled.

Mr. Renwick: You are thinking of something that could be designated more a due process operation than you had to use in the other cases.

Mr. Crosbie: Yes.

Mr. Thompson: Yes. Maybe a rundown or a wind-down rather than a winding up, where it is in the hands of the professionals.

Mr. Renwick: I certainly do not see any particular objections to that.

Mr. Crosbie: I think this is more or less put out on page 37 under the next heading, "Hearings and Appeals." One of the alternatives that is being proposed is due process at a court. That is number 4 on page 37.

Mr. Chairman: Are there any further questions on J-1? If not, we will move on to "Hearings and Appeals," which is section K.

Mr. Renwick: Just a second. Before we leave J-3, is that substitution of trustees to remove the need of an act of the Legislature?

Interjection: Yes.

Mr. Renwick: You had to come through with that Central Trust bill. It is certainly interesting to see an application to the Supreme Court that is going to be expeditious.

Mr. Chairman: Is there anything further on enforcement, Mr. Renwick?

Mr. Renwick: No, I am fine.

Mr. Chairman: Fine. We will move on to recommendation 1 on K-1.

Mr. Renwick: There is one other point that was mentioned, the question of penalties. I assume you are going to look carefully at the penalty section, for whatever that is worth.

Mr. Crosbie: Yes, we did some review in December 1982. The penalties were altered, but I think they obviously have to be reviewed in the light of the additional amendments.

Mr. Renwick: I think we should make a note that you are going to review them and that thought will be given to them so they are not just reproduced when the new bill comes through.

Mr. Crosbie: Yes.

4:10 p.m.

Mr. Chairman: K1 is next. "An expedited hearing and appeals procedure is proposed under which the registrar should be entitled to direct corporations to take or refrain from taking specific action and the corporation would be bound by that direction during the appeal process, so that depositors' money and the public interest would be protected until the potentially lengthy appeal process has run its course."

Mr. Renwick: My only comment to that is subject to relief by whoever is going to conduct the hearing, if it possible to suspend the operation of the order during the hearing period.

I think there are provisions which give a registrar authority, but once the hearing starts an appeal can be made that the injunction should be lifted in whole or in part during the course of the hearing until final disposition. Subject to that, I do not have anything else.

Mr. Chairman: Anything further on K1? If not, we will move on to recommendation 2.

Mr. Renwick: We do not really need that. That is really prospective. That is after Mr. Thompson resigns or leaves the service. We are talking about errors of law and fact. Can you imagine?

Mr. Thompson: I cannot make an error? None that I have admitted to.

Mr. Renwick: That will come into force on Mr. Thompson's demise.

Mr. Chairman: The researcher has just mentioned to me that exhibit 6 on page K-3 really should be with recommendation K2 at the bottom of page K-2. Exhibit 6 should be there.

Recommendation 2 is, "Appeals on errors of law or fact from decisions of the registrar would be provided to the courts and an additional appeal on matters of significant business import would be available to the commissioner."

Mr. Renwick: I do not see any particular problem with that. There are certainly a lot of problems but I do not see any problem with that.

Mr. Chairman: That is the least of them.

Recommendation K3: "Where the registrar has been obliged to take possession of a loan or trust corporation and rehabilitation is not possible, then the courts would be given a new and significant role in determining the terms and conditions under which the registrar would remain in possession or the assets and undertaking would be sold."

Mr. Renwick: I do not have any problem with that.

Mr. MacQuarrie: Really, some of the terms and conditions under which sales have taken place in the past were done under the authority of specific legislation. What sort of role do you see the courts playing here in determining terms and conditions?

Although they are blessed with infinite wisdom and all the rest of it, sometimes courts do not always make the best business decisions in terms of what is best for the depositors.

Mr. Crosbie: I would suggest that what we are looking at is the role the court currently plays when you appoint an administrator, receiver or trustee and he wishes to take certain action in respect to the assets. He applies to the court, lays before the court the business proposal and the court--

Mr. MacQuarrie: You are not thinking of changing the present policy all that much?

Mr. Crosbie: Not really, except that we do not have a mechanism whereby we could go to the court with perhaps the most viable business option and get it approved.

Mr. MacQuarrie: The real and significant role essentially is the appointment of an administrator and the terms under which he is to operate.

Mr. Crosbie: In a sense, yes, but also giving the court jurisdiction in this area.

Mr. MacQuarrie: Right, that complies.

Mr. Crosbie: Yes.

Mr. MacQuarrie: Okay.

Mr. Chairman: The next section is under L and it is general. It is basically matters that were not covered in the white paper, so the researchers put it all together.

Mr. Renwick: We have dealt with the first one, exhibit 43. We have really talked a lot about that.

On the second one, I think we have given some attention to that question of the outlying areas, namely, Hawkesbury.

On the next one, I do not have any problem updating the preferred share operations and so on. I wonder whether we should not make certain that the strange thing called nonvoting common shares not be available for issue by trust companies. I think there is now a lot of feeling around about the nonvoting common shares. I do not think we should be seen to be a leader in it, nor do I think the registrar should be faced with turning down an application if it came in. At the moment, one could, with a little ingenuity, create nonvoting common shares.

Mr. Thompson: Certainly the act, the way it is structured, presupposes that the voting of shareholders is extremely important in some circumstances, particularly in the cases of amalgamation, etc. I would agree with that.

Mr. MacQuarrie: I think Mr. Renwick mentioned the point with respect to nonvoting common shares, but swinging over to the preferred shares for a moment, what sort of rights should preferred shares in trust and loan companies carry, what preferences and what rights? Should they be redeemable out of treasury? Should they be callable? Should there be priority as to payment on winding up of dividends, or voting rights if dividends are not paid? Should any of these normal incidents of preferred shares be avoided with preferred shares of trust companies?

Mr. Thompson: I think that with the preferred shares, perhaps the two conflicting issues are that there is a market out there and we want to--

Mr. MacGuigan: Capitalize on it.

Mr. Thompson: Yes. You want to structure your share issue that will, in a sense, be pleasing to that market from the point of view that it will be picked up.

On the other hand, when you come in with preferred shares with specific dates for redemption or you get into the newer part called "retractable preferred," you have to deal with the fact that the capital perhaps is temporary, in that if you are basing a borrowing multiple on the amount that you can borrow from the public on a share infusion that might go out from the corporation. Then our approach to that is that we think we will address that in the borrowing base.

A very difficult thing to work out--even in the normal preference shares or indeed in subordinated notes that have a term period--is that as you get closer to the time necessary to come up with the capital to redeem or replace them, you have to weigh that into your borrowing base as to how much you can allow that to be treated. It calls for a very careful juggling act.

4:20 p.m.

Mr. MacQuarrie: What about convertible preferred shares changing your potential voting structure, your ownership. Are there the same limitations on the sales of preferred shares as you propose in terms of controlling foreign ownership of preferred shares? Is it part of the capital ownership that you proposed to restrict?

Mr. Thompson: Voting shares are where that restriction exists now.

Mr. MacQuarrie: That is right. I am just wondering about preferred shares and the rights that attach to them. In a lot of cases they do not vote unless the dividend is not paid for a number of years and that sort of thing. I just wondered if you could look at that.

Mr. Thompson: Yes. We were going to approach it by reason of definition of the borrowing base, whether you give credit for that capital, 100 per cent credit or--

Mr. MacQuarrie: It depends on the individual capital, I suppose.

Mr. Thompson: Yes.

Mr. Chairman: Thank you, gentlemen. Before we adjourn we would just like to discuss for a moment or two the format of the report. The researchers have a question or two they would like clarified.

Interjections.

Mr. Renwick: Unless there is strong reason for keeping it, I would certainly agree about abolishing the ad valorem tax on increasing authorized capital.

I am not particularly anxious to provide an easy road for Ontario trust corporations to come under federal jurisdiction at this time. The very last one was Morguard Investments, the continuance one. I think until this thing gets sorted out a lot, we are probably a long way down the road about the relationships between the various financial institutions. When we consider what has happened to the life insurance industry, I get worried about it.

Mr. Crosbie: I am not sure. I would like to check that section, but I thought it was the recipient jurisdiction that passes the continuance legislation, that the federal government continues a provincial corporation. What is being said here is

that if Ontario had a similar process, an Alberta company could be continued in Ontario.

Mr. Renwick: Do you mean an Ontario company can come under federal jurisdiction subject to the hold of the provincial government or the registrar?

Mr. Crosbie: The way I understood it was that the federal government recognizes it as a federal corporation and it continues its existence. It ceases--

Mr. Renwick: Is that by leave from you?

Mr. Thompson: No. I think in the ordinary Corporations Act there is a right given, but it is a right that a federal company can become an Ontario company and an Ontario company can become a federal one, but the federal Trust Companies Act only permits a provincial corporation, it does give a right to a federal company to become--

Mr. Renwick: No. I understand that.

Mr. Thompson: Without the reciprocity.

Mr. Renwick: If an Ontario company wanted to take advantage of the federal legislation, could you stop it?

Mr. Thompson: If they wanted to issue continuing letters patent, it would require a private member's bill. It would have to come before the Legislature.

Mr. Renwick: I hope I am making myself clear. If an Ontario company wants to take advantage of the provisions of the federal act to continue as a federal corporation and cease to be subject to the Ontario act, have you any hold on that company to prevent it from doing so?

Mr. Thompson: Yes, because it is not permitted under the Loan and Trust Corporations Act. They would have to come to the assembly and ask permission.

Mr. Renwick: The same way the insurance companies do.

Mr. Thompson: That is correct.

Mr. Renwick: That is why I think it should be left the way it is.

Ms. Mooney: I just wanted to check with the committee about the format we had suggested for the report, that is, similar to the one the standing committee on resource development did on the workers' compensation one where we were going to address each recommendation separately and have a page or so on the discussion the committee had gone into.

We are wondering, since several of the recommendations were discussed together in a way, if it would be all right with the

committee if we grouped recommendations where the discussion had pooled them together, so we did not have either the same discussion repeated on several different pages or blank pages. Is that okay?

We had taken Mr. Renwick's advice to write a preamble to each section, giving a general kind of consensus.

Mr. Renwick: I think that is fine in particular cases where we had a consensus about emphasis.

Ms. Mooney: We found a couple of disclaimers used in previous committee reports which say that while generally the committee is in agreement, not all committee members agree on every single point and they are not to be held responsible for any individual recommendation.

Mr. Renwick: Yes, we need that.

Mr. MacQuarrie: Particularly for--

Ms. Mooney: The other thing we wanted to know, especially since we completed going through the whole report today and you have set aside next Thursday to discuss some of the three bills, is whether it would be possible for us to appear for half an hour to an hour so you can have a look at a very rough draft of the one section, just to see if the way we are going is the way you want it.

Mr. Renwick: When do you want to do that?

Mr. Chairman: Next Thursday if we had the time. We may be through by Thursday afternoon; we do not know.

Mr. Renwick: Let us try to do it on Thursday. Do not break your back. If you are that far along and want to do it--

Ms. Mooney: Not the full report.

Mr. Renwick: No, no, I understand. If other things intervene, do not feel that it is a matter of great urgency. I am sure we will have the time. After the luncheon Mr. MacQuarrie and I had today, I think the bills will go swimmingly. That is the architects' bill.

Ms. Mooney: The final thing is when you want us to bring the final draft report of the whole thing back to the committee. I understood you will be sitting again in early April after the House is in session. That would give us about four weeks.

Mr. Renwick: I would assume the first meeting of the committee is likely to be early in April, but I do not think the world is going to come to a halt if it is not ready at April 1 or if it is ready at April 15.

Ms. Mooney: We have a little problem. Albert is going on holiday for the latter part of April, so the first couple of weeks--

Mr. Chairman: That would be great.

Mr. Renwick: It would work out fine because Albert will be glad to know I am going during the last two weeks in March. The first two weeks in April will be fine.

Ms. Mooney: Okay, thank you very much.

Mr. Renwick: I have one other suggestion. I think from the point of view of the various people who have appeared before us and the work which is here, it would be good if it is possible to compile an appendix to the report, to let everybody who has appeared before us know that we have considered each and every one of their recommendations, by specifically attaching the appendix. It would be helpful for people to understand that we do go to a great deal of effort to try to remember what people say, as would those other caveats I said about the police investigations, court cases and the inability of the ministry to satisfy us that there has been no regulatory failure.

Mr. Chairman: Thank you, Peggy and Albert, and thank you, Mr. Crosbie and Mr. Thompson, for being with us here. I certainly would like to thank the members who were involved in this process. With that, we will adjourn until Monday morning at 10 o'clock.

The committee adjourned at 4:29 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

COURTS OF JUSTICE ACT

MONDAY, MARCH 5, 1984

Morning sitting

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Grande, T. (Oakwood NDP)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durnam-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitutions:

Hodgson, W. (York North PC) for Mr. Eves
Kells, M. C. (Humber PC) for Mr. Mitchell
Reid, T. P. (Rainy River L-Lab.) for Mr. Spensieri

Also taking part:

McMurtry, Hon. R. R., Attorney General (Eglinton PC)

Clerk: Arnott, D.

From the Ministry of the Attorney General:

Beecroft, D. A., Counsel, Policy Development Division
Perkins, C., Counsel, Policy Development Division
Stone, A., Senior Legislative Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, March 5, 1984

The committee met at 10:07 a.m. in committee room 1.

COURTS OF JUSTICE ACT

Consideration of Bill 100, An Act to revise and consolidate the Law respecting the Organization, Operation and Proceedings of Courts of Justice in Ontario.

Mr. Chairman: Gentlemen, we are here to deal with Bill 100. All committee members have two copies of the bill, one showing the reprinted amendments proposed by the Attorney General and the original.

Possibly we could discuss having one of the members move a motion that the committee consider the reprinted Bill 100 showing the proposed amendments. Then when we get to the sections, we can pass the sections as we go along.

Mr. Breithaupt moves that the committee consider the reprinted Bill 100 showing the proposed amendments.

Mr. Breithaupt: Mr. Chairman, on the details with respect to the bill as reprinted, which is now what we will be using, we have received a variety of other items. They have just delivered further amendments to sections 77 and 82a. I presume they are new.

Mr. Beecroft: They are in the reprinted version of the bill. The two pages that were handed out today are corrections, really, to the handout you got on Thursday. Those two pages are already in the reprinted version.

Mr. Breithaupt: And are therefore in the amendments. We got an informal amendment package but that has to now be corrected.

Mr. Beecroft: That is right. Insert the amendment to section 77 and replace the amendment to section 82 with this new section 82a.

Mr. Breithaupt: Section 77 is a new amendment and what was 82 goes.

Mr. Beecroft: Right.

Mr. Breithaupt: In addition, we have received a copy of a letter directed to Mr. Harold Elliott, QC, from Mr. Doug Beecroft. Are the items in that letter, referring to section 15 and others, in addition to the amendments printed in the bill?

Mr. Beecroft: No. Most of the amendments that are contained in the reprinted version of the bill are taken from that letter. That letter recorded the results of a meeting we had with the Advocates' Society.

Mr. Breithaupt: So a number of these items were attended to and also were included in the amendments.

Mr. Beecroft: That is right.

Mr. Breithaupt: That seems to get us down to the position that everything that is wanted is within the reprinted bill, or are there still some additional amendments we will have to consider?

Mr. Beecroft: I think the Attorney General will have a small number of additional amendments.

Mr. Chairman: We have two from the NDP to deal with.

Mr. Renwick: Mr. Chairman, I am going to be introducing amendments to sections 64 and 67. With the agreement of the committee, we will deal with them at the same time when we get there. I have asked Mr. Arnott to distribute copies to members of the committee.

Mr. Chairman: Mr. Arnott is doing that now. Shall we deal with them together later on, as the member for Riverdale (Mr. Renwick) has suggested? Agreed.

Mr. Breithaupt: Other than the Attorney General's additional amendments, we now have all of the items before us in one place.

Mr. Chairman: Yes, as I understand it.

Mr. Breithaupt: As a matter of interest, now we have accepted the bill, as reprinted, before us, does that remove the necessity of making all of these particular motions on amendments, or do we have to go through all of that as well?

Mr. Chairman: No. I think we will have to go through all of that as well.

Mr. Breithaupt: Can we take the bill, as reprinted, to include amendments as complete? It would certainly save us the necessity of going through page after page of motions requiring this to be recorded in Hansard. If we accept the bill as reprinted, we could get on with what might only be eight or 10 other particular amendments.

I am certainly content to accept it, since it is the responsibility of the Attorney General to ensure all he wanted is in the bill, just as though it were presented to the ordinary committee of the whole House stage.

Mr. Chairman: Could we have a comment from legal counsel?

Mr. Stone: It has often happened before. If there is a motion by the committee that the committee would consider the reprint as being the bill that is being referred to by the committee, then the committee just goes through the reprint and votes on that.

There have been times when that motion has not been accepted and we go back to moving each motion on each section.

Mr. Breithaupt: Mr. Chairman, in order to save the requirement of moving each particular motion which will take up more time than we can afford to spend, since no doubt we have other matters in the bill to discuss, I move that Bill 100, as reprinted to include the amendments proposed by the Attorney General, be considered to be the bill referred to the committee.

Mr. J. A. Taylor: That was just moved.

Mr. Breithaupt: I thought it had to be phrased in that way.

Mr. Chairman: We were trying to get a clarification as to when we come to each section how we have to deal with it. What Mr. Breithaupt is now proposing is we accept it all, except the ones Mr. Renwick has and any new proposals.

Mr. MacQuarrie: I think this is certainly a practical way of approaching it. It is something we have--

Mr. J. A. Taylor: Whether we have already done it or not--

Mr. MacQuarrie: --already done or not. Let us agree with it.

Mr. J. A. Taylor: What you are saying now, I assume, is that each individual amendment will not have to be separately moved, but we will proceed on the basis of the reprinted bill incorporating the amendments. We will just accept each section, either as is or as the committee proposes further amendments. Is that the idea?

Mr. Chairman: I believe so.

Motion agreed to.

Mr. Chairman: All right. Is there any discussion or are there any motions on sections 1 to 13?

Mr. Breithaupt: It may be difficult to go in blocks quite that large, Mr. Chairman. We also have before us the summary of recommendations that members may wish to refer to. It would appear the only two referred to in that earlier part were comments by the Advocates' Society.

However, before we begin that, it could be that the Attorney General would like to inform us of any additional amendments he

has that are not printed, so we will know just what we may have beyond the material in the bill and, of course, the two amendments that Mr. Renwick is going to propose.

Mr. MacQuarrie: If I could direct a question to the Attorney General, it was indicated earlier that he had further amendments to the bill. At what section do they start?

Hon. Mr. McMurtry: Are we talking about the amendments in addition to those contained in the reprinted bill?

Mr. MacQuarrie: Yes. We are treating the reprinted bill as the bill before us.

Hon. Mr. McMurtry: I have an amendment to section 96. That would be the first amendment.

Mr. MacQuarrie: Mr. Renwick has amendments to two earlier sections.

On section 1:

Mr. J. A. Taylor: Mr. Chairman, I assume we are going to proceed one section at a time. If I could get it started, I would move that section 1 carry.

Section 1 agreed to.

On section 2:

Mr. Renwick: Mr. Chairman, I suppose it is polite to have it in the act, but I wonder if it is necessary to talk about "in England" any longer with respect to the historic exercise of jurisdiction of "courts of common law and equity."

Mr. Chairman: Any further discussion?

Mr. Renwick: I would like a response.

Mr. Breithaupt: I would presume the roots of "equity" would flow back, and that is perhaps why, but let us hear why.

Mr. Renwick: If I recall my history correctly, the Constitution Act of 1791 provided that the laws of England, as they stood at that time, were introduced into Upper Canada. I tend to think we should not perpetuate, unless there is some clear legal reason for doing so, the reference here to the "courts of common law and equity in England."

Hon. Mr. McMurtry: Mr. Beecroft might like to address this issue. I must admit I have not reflected on it of late.

Mr. Breithaupt: It may be important for a particular reason. Perhaps we could stand down section 2 until this afternoon.

Hon. Mr. McMurtry: We can comment on it now.

Mr. Breithaupt: Okay, then let us proceed.

10:20 a.m.

Mr. Beecroft: If you trace the existing Judicature Act back to the 19th century, you find yourself with a group of about half a dozen provisions enacted at various times during the 19th century that gave the Ontario Supreme Court the jurisdiction and powers formerly exercised by the superior courts of common law in England. Essentially, that is the origin of the use of the word "England" in this provision.

If you went back into old English legal history, there may still be powers you could find which may not yet have been exercised in Ontario, but which are part of the ancient jurisdiction of the superior courts of common law at Westminster. We want to be sure we do not deprive the Supreme Court of Ontario of any of those old powers.

Mr. Breithaupt: None of which, I presume, you are aware of at the moment?

Mr. Beecroft: There are some interesting arguments you could make. For example, there is a lot of discussion nowadays about what are called "mered injunctions." This is really a creation of English courts. It is almost a creation of Lord Denning. He reached back into the very earliest days of the equitable jurisdiction in the English courts in order to create that power.

So we want to be sure, if there are similar things--

Mr. J. A. Taylor: You have me convinced.

Mr. MacQuarrie: I can see nothing wrong with this section.

Mr. Chairman: Any further comments on section 2?

Section 2 agreed to.

Section 3 and 4 agreed to.

On section 5:

Mr. Breithaupt: I presume that under section 5 the general theme put forward with respect to the Divisional Court becoming an intermediate court of appeal has been considered but not accepted at this time.

Hon. Mr. McMurtry: That is correct.

Mr. Renwick: I find a certain grammatical problem with that section. It may be just myself, but at the end of subsection 5(1) you see, "and such other judges of the Divisional Court as the Chief Justice may designate from time to time." Then, in subsection 5(2) it says, "every judge of the High Court is also a judge of the Divisional Court."

My grammatical problem was that I would have thought it should be, "and such other judges of the High Court as the Chief Justice may designate from time to time." I do not know whether I am right or wrong on that. I presume I am probably wrong.

Mr. MacQuarrie: I think Mr. Renwick makes a very good point. First, we establish a Divisional Court, consisting of the Chief Justice of the High Court and "such other judges." I would be inclined to think the High Court would be the most appropriate wording there, rather than "Divisional Court," because you end up with a state of confusion.

Hon. Mr. McMurtry: I know this represents the existing graph that has existed for some time in relation to the Divisional Court.

Mr. Breithaupt: I think it is interesting that either word could fit in there quite accurately. What is being created is a division consisting of the Chief Justice of the High Court, "and such other judges" of the High Court. But since the section is referring to the Divisional Court, presumably those persons having been appointed will be judges of the Divisional Court.

Since every judge of the High Court is also a judge of the Divisional Court, as subsection 5(2) says, then I think the wording can stand the way it is.

Mr. J. A. Taylor: If we look at that wording, it says: "There shall be a division of the High Court, to be known as the Divisional Court of the High Court of Justice for Ontario consisting of the Chief Justice of the High Court who shall be president of the court and such other judges of the Divisional Court as the Chief Justice may designate from time to time."

It does not say from whence he designates them.

Mr. Breithaupt: He designates them from the High Court bench.

Mr. J. A. Taylor: Where does it say that?

Mr. Breithaupt: He has no other source of doing that.

Mr. J. A. Taylor: No. That is not necessarily so.

Mr. Beecroft: I see the point that is being made here. I think in a perfectly rational world it would make a lot of sense.

Mr. Renwick: That is the one I dwell in.

Mr. J. A. Taylor: And I enter into it occasionally.

Mr. Gillies: Do you send messages to your colleagues?

Mr. Breithaupt: To clarify the matter, Mr. Chairman, it would be best to remove the words "of the Divisional Court," and then everything will flow quite nicely.

The division consists of "the Chief Justice of the High Court... and such other judges...as the Chief Justice may designate...." Then we are told that every judge of the High Court is also a judge of the Divisional Court so that is where he gets his source of people as he may designate. That might tidy it up if you feel there is some confusion otherwise.

Mr. Chairman: Are there any comments on the proposal of the member for Kitchener (Mr. Breithaupt)?

Mr. J. A. Taylor: Is the designation confined to judges of the High Court?

Hon. Mr. McMurtry: Yes, that is my understanding.

Mr. Beecroft: I would just mention a concern I had. Under section 96 of the Constitution Acts the province cannot appoint federally appointed judges, obviously. The Supreme Court consists of federally appointed judges. The Divisional Court is part of the Supreme Court.

I am trying to determine why this language was chosen in 1970 when it was first enacted as a part of the Judicature Act. We have puzzled over this ourselves. The only thing we could think of was this, and I am not sure I am convinced by this argument. The concern we thought might have been in the minds of the draftsmen back in 1970 was that if you said, "Such other judges of the High Court as the Chief Justice may designate," you are, in effect, permitting the Chief Justice of the High Court to appoint judges when only the Governor General in Council can appoint.

Mr. J. A. Taylor: No, he is not appointing them; he is assigning them. He is assigning them to the Divisional Court.

Mr. Breithaupt: He did not create the people in that job; he is simply giving them some work to do.

Mr. J. A. Taylor: What is the Divisional Court? How can you talk about a Divisional Court if there are no judges? I am not clear on that. You have a Chief Justice who shall be president of the court. You have a president of the court and you say, "and such other judges of the Divisional Court...."

How do the judges become judges of the Divisional Court if we are talking about the Divisional Court?

Mr. Beecroft: There might have been a feeling in 1970 that this blanket statement in subsection 5(2), "Every judge of the High Court is also a judge of the Divisional Court" would save the province from any concern arising from section 96 of the Constitution Acts. We are not attempting to pick and choose which judges will sit in this court. We are saying that all judges can sit in this court.

10:30 a.m.

Mr. MacQuarrie: When the clause refers to such other judges as the Chief Justice designates and those other judges of the Divisional Court, we are producing, to my mind, a confusing and conflicting element here in that they are really judges of the High Court sitting as members of the Divisional Court.

I will buy the section 92 argument--or section 96, whatever it is--with respect to the comment Mr. Breithaupt made that "such other judges as the Chief Justice may designate" standing by itself might imply a power of appointment, but I still feel that the appropriate wording here is "other judges of the High Court as the Chief Justice may designate."

Hon. Mr. McMurtry: I do not think there is any problem with that, is there? I am quite prepared to accept an amendment if Mr. MacQuarrie might just substitute the words "the High Court," in place of the words "the Divisional Court."

Mr. Chairman: Mr. MacQuarrie moves that subsection 5(1) of the bill be amended by deleting the word "Divisional" from the second last line and substituting therefor the word "High."

Mr. Breithaupt: Mr. Chairman, I will withdraw the amendment I made if that is considered to sort out what is wanted with some greater precision.

Motion agreed to.

Section 5, as amended, agreed to.

Sections 6 to 10, inclusive, agreed to.

On section 11:

Mr. Renwick: In section 10 we have simply provided for a council of the judges of the Supreme Court to deal with the act, the rules of procedure and the administration of justice generally. Then in section 11 we appear to have a power by which that responsibility could be delegated to a committee of judges.

I have no concern about other authorities being delegated to committees of judges, but it does seem to me that the wide scope of the authority conferred upon the council of judges is best served by a council of the judges. I do not think that in any way prevents the council from appointing such other subcommittees, or others of themselves, to deal with matters which it has under consideration.

When you consider the words in section 10 "for the purpose of considering this act, the rules of civil procedure and the administration of justice generally," I think that council should exercise that authority. How the members of the council choose to exercise it among themselves with respect to study, review or however they want to do it would be their own business. But I would then have difficulty with that general authority of the council of judges to be delegated and exercised by merely a committee of those judges.

Mr. J. A. Taylor: What comprises the council of judges?

Mr. Chairman: Mr. Perkins, do you have something to add?

Mr. Perkins: If I could assist the committee on this, the council of judges is a name for a meeting of all the judges of the Supreme Court. Normally, they meet once a year in Toronto. It is usually the week between Christmas and the New Year because there is no sitting of the court during that time.

However, quite frequently an important matter will come up, the Courts of Justice Act being one example of that, where it is not possible to gather all the judges together because they are out on circuit or the Court of Appeal is sitting and so on. In that situation, they delegate the task to a committee they have nominated. The recommendation of the committee is circulated to the judges, but they do not meet in council. What they have is a circulation, and if we hear no objection, we take it as adopted. Then the committee, acting for the council, will forward its report.

That is what they did on the Courts of Justice Act, for example. That is also what they do when there has to be an important rearrangement of the sitting of the High Court. The sittings of the High Court are determined by all of the judges, so if there is to be a rearrangement, usually the Chief Justice will not do that on his own authority. He will usually seek the approval of a committee of judges so he will not be seen to act unilaterally on such an important matter.

The section here is really for those two purposes. We have been told by the judges that they regard it as very important to have it as it is before us now.

Mr. J. A. Taylor: What I was trying to distinguish is the difference between the council of judges and the judges as a body of the whole.

Mr. Perkins: There really is not a distinction between all the judges of the Supreme Court and the council of judges. The council of judges is the traditional name for the big annual meeting where they all gather together in Toronto just after Christmas.

Mr. J. A. Taylor: So if those bodies were synonymous, then what they are doing is appointing a committee of themselves.

Mr. Perkins: Yes, that is right. But this section also serves to permit the High Court judges who regulate their own sittings to delegate to a committee of themselves as well.

Mr. Renwick: I simply want to remake the relatively simple point I made. If we are passing an act that states the judges of the Supreme Court shall meet for these purposes and that the judges shall report their recommendations to the Attorney General, not the council of judges or any other body, then that major power, regardless of how they may decide to review the matters that come before them under this head of their authority, should be the ones to act.

In my view, questions of convenience within the court must give way to the importance of the responsibility of the council of judges and of the judges collectively to make their recommendations. I have never been one who believed you ever give proper attention to anything circulated among a large number of people.

10:40 a.m.

I am not suggesting there may not be an appropriate place for a delegation to a committee in other portions of the bill, but that particular major responsibility of the judges as a whole seems to me to be quite important. If, in fact, under some existing situation, something called the council of judges, if the judges collectively did not make recommendations to the Attorney General, I would be very concerned about it. How they arrive at the process is fine with me. Everyone knows how in a busy world if you are a member of some body and somebody circulates something to you, it does not get the kind of attention it might if you have a responsibility.

I do not want to repeat myself; that is my concern about section 11.

Mr. MacQuarrie: Mr. Chairman, I wonder, in dealing with section 11, what power or authority is conferred on the judges of the Supreme Court or the High Court as a body?

Hon. Mr. McMurtry: Only the power to make recommendations and, of course, organizing sittings.

Mr. MacQuarrie: Really, we are talking about a very narrow range of internal government, except for the authority to make recommendations, whatever that is.

I do not see any real problem in having that.

Mr. Renwick: That is precisely the problem. We are saying, on the one hand, the judges collectively shall report their recommendations to the Attorney General. Then, on the other hand, we are saying no, they must not do it because it will not be done that way, it will be done by committees.

Mr. MacQuarrie: It says it can be done by committee.

Mr. Renwick: I do not consider it a particularly narrow authority conferred on the council of judges; I consider it to be a very important and broad authority for the purpose of considering the act, the rules of civil procedure and the administration of justice generally.

However they may work it out amongst themselves, I do not think they should be allowed to depart from the responsibility that collectively, as a body, it is the council of judges which is making the recommendations to the Attorney General on matters of such importance.

Hon. Mr. McMurtry: Our judges are strongly of the view that without this section 11 they are unable to make any recommendations to us without meeting as a complete body. That is their view, and obviously the problem of all of the judges meeting more than once a year is very significant.

I think it would be unwise to remove the section which our judges, in exercising their best judgement, truly believe, in good faith, is necessary for them to discharge their responsibilities in making recommendations to the Attorney General that would be recommendations of the council of judges as a whole.

Mr. Breithaupt: I would presume from the mechanics of dealing with these matters that if certain authority or power is given to a committee, then that committee would report back to its senior body for at least a cursory approval of its suggestions or a circularization of those suggestions to the members before any recommendations would be made to the Attorney General.

If that practice were the one followed, then the recommendations made would have received the imprimatur of the judges as a whole in the council. On the other hand, if that group is given responsibilities and chooses to say to several who are particularly interested in a theme, "Sort this out and make a recommendation," that too is within their responsibility if they wish to exercise it in that way.

Either way the Attorney General surely is able to depend upon the report made to him as one which is the wish of the council in full or a group of the council that has been given responsibility to do a certain thing, and that responsibility binds the council on any recommendation that so-and-so be changed or improved upon.

I do not see the difficulty in the delegation of power internally for these responsibilities since the ultimate responsibility is that of all of them together in a thing called a council.

Mr. Chairman: Is there any further discussion on section 11? Shall section 11 carry? Do you have a motion, Mr. Renwick?

Mr. Renwick: Let us have a vote.

Mr. J. A. Taylor: Did that carry?

Mr. Chairman: No. Mr. Renwick would not agree to it.

Mr. T. P. Reid: Do you wish this to be recorded, Mr. Renwick?

Mr. Renwick: Yes. Sure. A vote never hurts.

Hon. Mr. McMurtry: I would like to make a comment. I do not quarrel with what Mr. Breithaupt has just said about how this would be deemed to function. I think it is important in this regard and in this context to respect the views of senior members of the judiciary who feel quite strongly that this is necessary for them to function in the manner they believe is proper in making these recommendations.

Given the fact that reasonable people can disagree as to the necessity of section 11, bearing in mind that it is fundamentally a power to make recommendations, this committee, with the greatest respect, should acknowledge the concerns of the judiciary in this respect so far as their own internal functioning is concerned. I say this, believing there is clearly no suggestion that it would not be in the public interest to proceed in this manner.

Mr. MacQuarrie: Mr. Chairman, I feel that not only does this aid in the administration of justice in the internal functioning of the courts, but to delete the clause would tend to put the court in a bit of a straitjacket as far as some of its work is concerned. I certainly feel that the clause should stand.

Mr. J. A. Taylor: Especially where that delegation is to the High Court, I would think, with the numbers of justices and the fact that they are all over. I can see a concern on the part of the High Court to have the authority to delegate that to a smaller number.

Could you not put the vote, Mr. Chairman? I do not think it has to be recorded. A show of hands would suffice.

Mr. Chairman: Yes. All those in favour of section 11? All those against?

Section 11 agreed to.

On section 12:

Mr. Breithaupt: Mr. Chairman, I have one question on section 12. For the first time, you have used the phrase "district court judge." I do not see it defined or referred to otherwise. How are we to know what district court means, unless I have missed it?

Mr. J. A. Taylor: It is part of the unification of the courts. What section is that now?

Mr. MacQuarrie: It is in part II.

Mr. J. A. Taylor: That is in part II.

Mr. Breithaupt: It is not in the definition. Should some reference be made since this is the first time we see the phrase?

Mr. MacQuarrie: It is very properly defined in subsection 25(1).

Mr. J. A. Taylor: Of part II.

10:50 a.m.

Mr. Chairman: Mr. Perkins, do you have a comment?

Mr. Perkins: If I might assist, Mr. Chairman, there is a principle that you have to read the legislation as a whole. By the time you get to part II, it becomes abundantly clear there is a new creature called a district court judge. In section 26, for example, we see that the actual composition of the district court is laid out. Although the term "district court judge" is not defined, it is clear from its use in the bill what it means. I agree this is a little bit anticipatory to section 12.

Mr. Breithaupt: That is a fair comment. We are referring to the Supreme Court and district court judges have certain powers as defined as a local judge of the High Court division. I suppose it should be part of the structure of the Supreme Court in an ancillary way. Perhaps it should be repeated in case not everyone reads the whole statute and simply looks at part II with respect to the district court. Do we specifically refer in the sections of part II to the fact that a district court judge may be appointed as a local judge of the High Court?

Mr. Perkins: No, we do not do that there. As Mr. Breithaupt quite rightly points out, the function of section 12 is to form part of the organization of the Supreme Court of Ontario, and this is an office of the Supreme Court to which persons who happen to be district court judges are appointed. This section is for the benefit of the government of Canada. It creates an office called "local judge," to which the government of Canada appoints every district court judge. For that reason, I would submit it properly appears here in the Supreme Court part.

When you get into the district court part, you are more interested in what the district court judges do as the district court rather than as functionaries of the Supreme Court. I would not think it is necessary to have it in part II.

Mr. Breithaupt: Very well.

Mr. Chairman: After that clarification, we will move on.

Sections 12 and 13 agreed to.

On section 14:

Mr. Breithaupt: Mr. Chairman, on section 14 we had the comments from the Huron County Law Association, among others, with respect to the matter of sittings when there might not be sufficient work to have a separate semi-annual sitting in the county seat and how the matter might be sorted out. I notice there is an amendment before us, the underlined portion of subsection 14(3), referring to the case when there are not enough proceedings ready to be heard at the sitting. Is this the way the concerns of Huron county were sorted out?

Hon. Mr. McMurtry: The amendment there really improves on the wording. It is a technical change. It does not address the issue that was raised by the Huron County Law Association.

Mr. Breithaupt: Is it a fairly common occurrence that there is not enough work on a Supreme Court list twice a year in a number of the counties that this should be a particular problem to be addressed?

Hon. Mr. McMurtry: Yes, it does. Do you know where specifically this does happen, Mr. Perkins?

Mr. Perkins: Yes. It does happen in Manitoulin. It sometimes happens in the smaller centres of eastern Ontario. L'Orignal comes to mind--not regularly, but it does happen there. It happens regularly in Manitoulin. It has been known to happen in Walkerton as well. There are not very many places.

I am told by the Chief Justice of the High Court that what they do now, with the co-operation of counsel, is arrange that a judge will be made available in the neighbouring county and that judge in the neighbouring county will dispose of the one or two cases on the Walkerton list, for example. They will go over to Owen Sound for the trial. They are doing that now on consent of counsel only. The Chief Justice is of the view that it is a major improvement in the efficiency of the Supreme Court that he does not lose a judge for two, three or four days to go down and come back and hear, in the course of that trip, one or two cases when they can be accommodated in the next county in this manner.

Mr. Breithaupt: Yet the principle of the circuit and the High Court judge sitting in the county seat is one that--

Mr. Renwick: The availability of accommodation suitable to the judge is a factor.

Mr. Breithaupt: Yes, a certain panoply in the event itself. But it is unfortunate to contemplate perhaps the efficiency of the system compared with the traditions of having a sitting in the county seat, no matter how short the list.

Mr. J. A. Taylor: Whether they need it or not.

Mr. Renwick: The words "not enough" are so precise.

Mr. Breithaupt: Yes, they are not enough. Another cherished tradition thrown away by this government.

Hon. Mr. McMurtry: As I said during the discussion at the time of the public hearings, it is an issue that does concern me. I think I said at that time that I do not quarrel with the principle respecting the important tradition of sittings in specific counties or districts. As long as there is one case to be heard, I do not worry about the fact that a judge will travel to Goderich just to hear one case. The presence of the judiciary, whether as a Supreme Court sitting or as a full-time resident judge of the county or provincial court, is an important tradition.

What we are dealing with here, of course, as we are in so many of these cases, are competing rights, the rights of a litigant to have the one case heard at a specific sitting in a

particular county or district in relation to the rights of the public as a whole to obtain a greater efficiency in relation to the utilization of judicial resources.

Obviously, when one looks at the expense involved in a sitting in any particular place, the taxpayer does have an interest in a modest amount of efficiency. I am not suggesting we should be looking for the maximum efficiency because maximum efficiency may not always be consistent with the ends of justice, but in this particular case the Chief Justice of the High Court can make a strong case for better utilization of judicial resources when occasionally these sittings close by can be combined when there are relatively few matters to be heard.

11 a.m.

I agree with what Mr. Renwick has said about the imprecision of the words "not enough proceedings," which does really involve a total discretion with respect to combining these sittings.

Mr. J. A. Taylor: It may not be wide enough. It may depend upon the nature of the particular issue. It may be a single proceeding, but it may be a very lengthy one and essentially of local interest.

Hon. Mr. McMurtry: In which case it would be combined.

Mr. J. A. Taylor: That is right. Consider the distance one might have to travel to the next county town and the inconvenience in terms of witnesses and so on. The imprecision would not bother me if it were so broad as to encompass those extenuating circumstances, rather than being confined to straight numbers of cases.

Mr. Renwick: How I justified the imprecision of the language to myself was that as one tries to think of any positive alternative, one starts down the slippery road of eliminating sittings somehow or other in a particular one almost by force of habit.

If a pattern were to develop of always holding combined sittings in one county, I think I would be very concerned, but I do not know how we could avoid that, other than to have the Chief Justice of the High Court, who ultimately has to make the decision about the sittings, do it with all the factors in mind, without having us try to enumerate the factors involved.

I think we have to have confidence that the Chief Justice of the High Court would not ignore a particular county or district simply on some numbers game. He would, in fact understand the nature of the litigation at issue in that particular county before making a decision with respect to it. If he were going to operate on numbers, then I would be concerned, but I do not worry too much about the solution that has been reached. If it turns out it is not adequate, we would have to consider some other way of dealing with it.

Hon. Mr. McMurtry: I think that is a very sensible approach. It might be wise to leave the wording as amended, but I am certainly quite prepared to communicate the concerns expressed by the committee to the Chief Justice that this not become a routine matter and to express specifically Mr. Renwick's comments. I know the Chief Justice of the High Court would certainly approve of the comments that have been made. I really do believe he is sensitive to this issue and sensitive to the traditions of these sittings being held.

Mr. Breithaupt: Before any combined sitting is done, other than a matter on consent to perhaps get on at a certain earlier time, I presume the Chief Justice would contact the local registrar and be given some idea of the time involved. For example, there might only be five items, but that might take a full week or it might be 10 days. Who knows?

On the other hand, if the fact that the judge was to be on the scene was likely to cause certain settlements to take place and the list collapsed, that is something we would know about only after the event. It must be very difficult to try to sort out exactly how long anything will take and, when a matter is finally called for trial, whether that trial will proceed or whether settlement will occur at the courthouse door.

I suppose we are each of us prepared to accept the goodwill, interest and general intelligence of the Chief Justice to recognize the themes and the tradition of matters being heard in a particular area, not only for the interest and convenience of the council witnesses and parties involved, but also as a matter of public interest that may occur because of a certain issue being before the courts in a certain community.

Mr. J. A. Taylor: Mr. Chairman, I am not concerned about the goodwill of the Chief Justice. I am concerned that the wording does not restrict the application of that goodwill by interpreting sufficient or enough proceedings to mean something more than one case, depending upon the circumstances. Would the Attorney General agree one case might be "enough proceedings"?

Hon. Mr. McMurtry: Depending on all the circumstances.

Mr. J. A. Taylor: Depending upon the present nature of the case.

If that is so, then I feel satisfied with it. I just did not want it to restrict the judge.

Mr. Renwick: If the Attorney General is prepared to communicate our concern to the Chief Justice, I think that would be adequate from my point of view.

Mr. Elston: May I ask a question of the Attorney General?

If perhaps a particular counsel or his client feels aggrieved by the fact that he may be forced to drive from Grand Bend to Stratford or from Walkerton to Owen Sound and house his witnesses there for the one particular event that he has been

planning for some time, what is his recourse? As I see it, there is no recourse for him if he feels aggrieved by the decision to hold a joint sitting, and that is not fair.

Mr. Breithaupt: He will want to get on with the trial.

Mr. Elston: He may or may not. If you have a very large number of people--I presume these are the circumstances that may be considered.

Hon. Mr. McMurtry: If it were the case that there was a major case to be heard, I would say it would be highly unlikely it would be just arbitrarily moved from the fiat of the Chief Justice without appropriate consultation with the local registrar. It is just not likely to happen.

Mr. Elston: Is it not practical then to have at least one occasion during the year when these matters must be--

Hon. Mr. McMurtry: We have estimates every year in which these matters can be raised.

Mr. Elston: I am not talking about estimates. I am talking about the question of whether there should not be at least one set time when a judge of the Supreme Court comes to a particular locale.

It just seems to me it would be very easy for Manitoulin, for instance, never to have a judge of the High Court drop his books on the courthouse desk--who knows, it may happen in Walkerton or Goderich, which are a little closer to my home--just because they feel it would be a little easier to accommodate the justice in the Holiday Inn in Owen Sound or London. It does not require extra transportation by car and all that sort of stuff.

It seems to me there is a need at least to provide someone with access to a way of saying, "Although this case is only one, it is of very real and significant importance to us in this locality." If the Chief Justice cannot be persuaded of that, what do you do? You end up going gosh only knows where.

Hon. Mr. McMurtry: Again, I reiterate what I have said. I think the Chief Justice is sensitive to these issues. This is a matter that obviously will be monitored. I will be expressing the concerns you, the member for Riverdale (Mr. Renwick) and others have expressed in relation to this.

In the event that, somewhere down the road, some future Chief Justice--I do not think it will be this Chief Justice--were to act in a rather arbitrary fashion to eliminate that important presence, then obviously I think anyone in my position would be very interested in amending this section to require sittings if there is any work to be heard.

11:10 a.m.

I would hope that would not be necessary. I would hope, in the scheme of things, reasonable people would prevail. These

traditions, the importance of which I have already spoken, with respect to the presence of the High Court of Justice in these various communities are not something that should be lightly overlooked or certainly should not be jettisoned in any arbitrary fashion. Given our discussion, I think you will find this is something on which there is a considerable degree of sensitivity on the part of the Chief Justice who must make these decisions.

In the event that some Chief Justice of the future were to become insensitive to these important traditions and the rights of the individual litigants in these different areas which you have described, and which other parts of the province are concerned about, then I would think it would certainly be appropriate for the Legislature to amend this section and to narrow, if not eliminate, the broad discretion which we are proposing at the present time.

I think the very fact that we have had this discussion will be helpful for the record.

Mr. Chairman: There being no further discussion on section, shall section 14, as reprinted, carry?

Section 14 agreed to.

On section 15:

Mr. Chairman: Any discussion on section 15?

Mr. Renwick: I just have one question on it. I believe there is only one reference in the act to prerogative writs, and yet it is the Divisional Court, basically, that deals with those applications. Could the minister or his advisers take me through to indicate where the Divisional Court receives its jurisdiction to deal with prerogative matters?

Hon. Mr. McMurtry: Under the Judicial Review Procedure Act.

Mr. Renwick: It comes under that act, so we are not touching the Judicial Review Procedure Act which confers almost a separate head of jurisdiction on the Divisional Court.

Mr. Breithaupt: There were comments from the group made by the Advocates' Society with respect to section 15. They refer generally, in the letter to Mr. Elliott, to the items of a lump sum, an order based upon the findings of the jury; and there were other matters to which they referred.

Mr. Beecroft: Yes.

Mr. Breithaupt: How were they resolved?

Mr. Beecroft: With respect to one or two of them the Advocates' Society agreed that no change was necessary. Two changes in the reprinted version stem from those discussions.

Mr. Chairman: There be no further discussion on section 15, shall section 15, as reprinted, carry?

Section 15 agreed to.

On section 16:

Mr. Chairman: Shall section 16, as reprinted, carry?

Mr. J. A. Taylor: Is there just the one amendment?

Mr. Chairman: Yes; the one that is underlined.

Mr. Renwick: Again, just as a matter of curiosity, where does the Divisional Court sit other than in Toronto?

Mr. Beecroft: Ottawa and London.

Mr. Renwick: Ottawa and London.

Mr. Beecroft: I think there are sittings every year in Ottawa and London, and it sometimes sits in Thunder Bay.

I am not sure about Hamilton. Most of the time, the Divisional Court sits in Toronto, but it does occasionally sit elsewhere.

Mr. Renwick: I asked that just as a matter of information.

Mr. Chairman: Shall section 16 carry?

Section 16 agreed to.

Sections 17 and 18 agreed to.

On section 19:

Mr. Chairman: Shall section 19 carry?

Mr. Renwick: I think section 19 should not pass without the comment that this leads later to the repeal of the Constitutional Questions Act, and of course this is a most important provision of the bill because, particularly latterly, it has been used on a number of occasions and likely will continue to be very important. The Constitutional Questions Act always had an ambiguity in the title that the Lieutenant Governor in Council could refer any question of any kind.

Mr. Breithaupt: It would have to be done under that heading, even though it was not a constitutional question.

Mr. Renwick: Even though it was not a constitutional question.

Mr. Chairman: Is there any further discussion on section 19? Shall section 19 carry?

Mr. Renwick: Just before we leave section 19--I do not want to prolong it, because I know it is a difficult question and so on--has there been any problem with respect to standing under that act? The court generally holds a session to determine who is in interest and who has standing. It has been my sense they have been more open than closed on the question of granting standing.

Hon. Mr. McMurtry: Yes. As you know--in all matters that I can think of--there is fairly extensive newspaper publication of the fact that the reference is being made and inviting parties, who have a direct interest, to apply for standing. You are quite correct, Mr. Renwick, in stating the court has been quite open in this respect.

Mr. Renwick: I am happy, Mr. Chairman.

Mr. Chairman: Thank you, Mr. Renwick.

Section 19 agreed to.

On section 20:

Mr. Chairman: Is there any discussion on section 20?
Shall section 20 carry?

Mr. Renwick: Just a second here. Do the masters have an association of their own?

Hon. Mr. McMurtry: I am not aware of any association. Obviously, they meet together in a body fairly frequently, most of the masters being located, as you know, in Toronto. We now have masters in Ottawa and in London, but I do not believe they have any formal association.

Mr. Renwick: Has there been a view expressed by the masters on this question as to whether contributions of portions of their salaries to the benefits is of concern to them or not?

Hon. Mr. McMurtry: I have heard of none.

Mr. Renwick: None. Thank you.

Mr. T. P. Reid: Is this an appointment for life?

Hon. Mr. McMurtry: Yes, until the age of 65.

Mr. T. P. Reid: They can only be removed for cause, then.

Mr. Renwick: I have a funny feeling and--

Mr. Chairman: Shall section 20, as reprinted--

Mr. Renwick: Just a second. As I take it, the only way in which they could be removed from office, Mr. Reid, would be by an address at the assembly.

Hon. Mr. McMurtry: Yes. The same provisions apply as would for the removal of a provincial court judge.

Mr. Renwick: Of a provincial judge.

Hon. Mr. McMurtry: The procedure is quite elaborate and comprehensive, and does provide a very significant degree of independence.

Mr. Elston: Would a person with a policy similar to that of Brian Mulroney be able to remove these people?

Hon. Mr. McMurtry: I have not the faintest idea what you are speaking of, Mr. Elston.

Mr. Chairman: What policy?

Shall section 20, as reprinted, carry?

11:20 a.m.

Section 20, as reprinted, agreed to.

Sections 21 and 22 agreed to.

On section 23:

Mr. Renwick: Are those investments under section 3 of the Financial Administration Act?

Hon. Mr. McMurtry: Yes. As you know--

Mr. Renwick: That is a very restricted list.

Hon. Mr. McMurtry: A very restricted list, yes.

Mr. Renwick: I can look it up if I need to. Which trust company is employed at the present time?

Hon. Mr. McMurtry: I do not know.

Mr. Renwick: Is it just one trust company or more than one? I bet it is National.

Hon. Mr. McMurtry: We could find that out for you.

Mr. Renwick: Maybe you could inquire at some point, would you, out of curiosity?

Section 23 agreed to.

Section 24 agreed to.

On section 25:

Mr. Renwick: There was a serious omission in the original bill which was reprinted to now include criminal courts and courts of general sessions of the peace.

Section 25 agreed to.

On section 26:

Mr. Breithaupt: On section 26 we had that comment made to us with respect to the size of regions, presumably for the convenience of the solicitors and other parties involved, with respect to travel in dealing with a case that might be heard somewhere else. Could someone inform us of what the regions are now and does the pattern within each region allow for some sort of circuit travel which balances up the work load between one county and another, or one district and another as it now will be?

Hon. Mr. McMurtry: We are really at quite a preliminary stage. This is a proposal that has been made by the county court or the district court judges because of the desire to create regions in order to share the work load more equitably. We have attempted to provide the legislative framework within which some of these proposals will be developed, but I think it is fair to say we are still at the early embryonic stage.

Mr. Elston: Again, once this provision is put into place, what redress would a locale have if they did not particularly care for the growth of the embryo?

Hon. Mr. McMurtry: You mean in relation to the actual geography that might be included in the region?

Mr. Elston: That is right.

Hon. Mr. McMurtry: They would have the normal interaction that occurs in relation to the administration of justice, because it is the Lieutenant Governor in Council who must establish the regions. Our view is that the mini-circuits, if you want to use that term, are something the judges themselves will want to develop, because it really is the responsibility of the chief judge to assign judges if they are going to be sitting outside of their normal jurisdiction or bailiwick.

Mr. Breithaupt: Will he have the opportunity to do that now without question as to a person who may feel that he or she was appointed solely for one area?

Hon. Mr. McMurtry: Yes. That is one of the reasons we are very supportive of the proposal that came from the judges that it be called the district court of Ontario as opposed to maintaining the appearance that each judge is only assigned to a specific county or district as was mentioned by the member for Kitchener (Mr. Breithaupt), because we think this is highly desirable to equalize the work load.

Mr. Elston: Is it a major problem now that judges just do not wish to move themselves from one place to another? Is that what you are saying?

Hon. Mr. McMurtry: Some judges are quite reluctant, yes, but I think--

Mr. Elston: A vast number?

Hon. Mr. McMurtry: I cannot say whether it is a large number because most of the judges are very co-operative. I think the great majority of judges in the county and district courts are very co-operative with respect to helping out on other areas, but there are some judges who believe very strongly that they are only appointed to a specific locality and their responsibilities lie within that area and that area alone.

Mr. J. A. Taylor: This section is for the mobility of judges.

Hon. Mr. McMurtry: A greater degree of flexibility, yes.

Mr. Elston: It provides the chief judge with a little more leverage to decide, in other words?

Hon. Mr. McMurtry: Yes.

Mr. J. A. Taylor: Free movement of judges throughout the province.

Mr. Elston: We are not freeing any of the judges. We are freeing the Chief Justice, which I believe is probably more appropriate.

Section 26 agreed to.

Sections 27 to 30, inclusive, agreed to.

On section 31:

Mr. Renwick: Wait a minute now. You cannot leave the room.

Mr. MacQuarrie: We are calling most of these Renwick amendments.

Mr. Renwick: If you do not mind, I am not trying to reopen anything but I wanted to ask who appoints the chief judge of the district court. Is that a federal appointment?

Hon. Mr. McMurtry: Yes. Ottawa.

Mr. Renwick: My only other comment on section 31 is that I am delighted the judges of the district court do not feel they need the capacity to delegate their responsibilities and are prepared collectively to assume the responsibility for making their recommendations to the Attorney General.

Mr. J. A. Taylor: That is why it carries--

Mr. Renwick: I just wanted to let you know I had noted that, and I may say we will not entertain an amendment in the House on that section.

Section 31 agreed to.

Sections 32 and 33 agreed to.

Section 34, as reprinted, agreed to.

11:30 a.m.

On section 35:

Mr. Breithaupt: Mr. Chairman, the contempt of court theme is referred to in section 35. Is this section likely to be changed by some of the proposals of the Attorney General of Canada, the Minister of Justice, or is this a general wording which would stand however the particulars are defined?

Hon. Mr. McMurtry: The federal proposals, as I understand them, deal with contempt in the face of the court. We are dealing here with the wilful contempt of or resistance to its process, rules or orders. Would that not include contempt in the face of the court as well?

Mr. MacQuarrie: I think it would.

Mr. Beecroft: The federal proposals deal primarily with disrupting judicial proceedings.

Mr. Breithaupt: So we are dealing with them before the decision, as opposed to this section, which is dealing with something after the decision.

Mr. Beecroft: That is right. The federal proposals specifically avoided dealing with contempt powers or contempt of the court order, enforcing the court order.

Section 35 agreed to.

On section 36:

Mr. Breithaupt: Again, the Advocates' Society matter has been resolved?

Mr. Beecroft: The same changes that were made to section 15 have been included in section 36.

Section 36, as reprinted, agreed to.

Section 37 agreed to.

On section 38:

Mr. Breithaupt: Mr. Chairman, if there are no comments with respect to part III then that entire area can carry. I have nothing particular with respect to the jurisdictions or proceedings in the unified family court.

Since we are effectively repeating what has developed in the Hamilton-Wentworth experiment, this is now being put into a framework and possibly other jurisdictions may develop along this same way. Unless there are some additional comments, I am prepared to allow that area to carry.

I would appreciate hearing, though, from the Attorney General or his staff as to whether any changes as a result of the Hamilton-Wentworth experience have led to amendments internally, just so that we would have those highlighted for us in case we have occasion at some time in the future to consider other areas to be dealt with in this same way.

Mr. Renwick: I have two or three. Perhaps you would not mind going through them one by one.

Section 38 agreed to.

Sections 39 and 40 agreed to.

On section 41:

Mr. Renwick: Perhaps I may just ask what the Attorney General's intentions are with respect to expanding the unified family court system. Are you still simply, at the moment, viewing the single, united family court as an experimental court, or is it advanced to the point that you are considering establishing such a court in other areas?

Hon. Mr. McMurtry: We think the experiment has progressed beyond what can be regarded as simply an experiment or a pilot project for this reason: we have incorporated the court in the Courts of Justice Act as we recognize it as a permanent feature now. We would like to expand the unified family court concept to other areas of the province, but we would like to do it pursuant to a constitutional amendment.

We believe the present manner of appointing judges to the unified family court as it exists in Hamilton-Wentworth is undesirable in relation to expansion into other areas of the community. This whole issue of section 96 is quite a lively issue within the ranks of the judiciary and bar, particularly across the country. As a matter of fact, at the midwinter meeting of the Canadian Bar Association which took place at Whitehorse last week, the Deputy Attorney General of Ontario sat on a panel--he gets all the great trips--

Mr. Breithaupt: Some go north, but some have to go south.

Hon. Mr. McMurtry: --to deal with this whole section 96 issue.

As I have said on other occasions, we are very disappointed that the federal government fundamentally reneged on what came pretty close to a commitment several years ago to amend section 96 to allow provinces to create unified family courts at the provincial court level, but the whole issue of section 96 jurisdiction is currently under discussion and review.

The concern is the provinces should not be encouraged to set up tribunals to deal with matters that have been traditionally dealt with in the courts. There are concerns, which we think are relatively unjustified, that an amendment to section 96 could open the door to the creation of a plethora of administrative tribunals

to deal with most aspects of civil litigation under the auspices or the jurisdiction of the tribunal as opposed to the court.

We think a unified family court can be established in such a way through an amendment to section 96 to alleviate any of the concerns people might have in relation to establishing these provincial tribunals to take over most of the civil litigation. Unfortunately, the section 96 debate in the context of the unified family court has been caught up in the broader issues of section 96 jurisdiction, such as the issue of the residential tenancies tribunal, which I know is of great interest to the member for Riverdale.

I do not think we are going to have a resolution of the unified family court until we have a greater resolution of the section 96 issue in general. I think it is fair to say this leaves us in the position where any expansion of the unified family court beyond Hamilton is on hold at this time.

Mr. Renwick: I have no questions up to section 43, Mr. Chairman.

Section 41 agreed to.

Section 42 agreed to.

On section 43:

Mr. Renwick: On section 43, my comment relates to the representation from the Committee for Fair Revision of Family Law in Ontario and the evident concern which was expressed about the phrase, "resistance to its process, rules or orders," and the extent of the fine.

That matter has not been dealt with since the time we heard that representation. I assume it is going to stand until such time as we see the amendments to the Family Law Reform Act. Is that correct?

11:40 a.m.

Hon. Mr. McMurtry: Yes. The Advocates' Society also addressed their attention to this issue and we are content with our explanation. The particular group that appeared before this committee had concerns perhaps not totally warranted, or even warranted at all, in the context in which they were presented.

Mr. Breithaupt: If the Family Law Reform Act is amended, will this particular subsection at least be included in the variety of considerations, so we are all aware that if there are some changes, it may be that further consideration with respect to subsection 43(2) will also have to appear on the checklist of what is being considered?

Hon. Mr. McMurtry: I would think so. Yes.

Section 43 agreed to.

Sections 44 and 45 agreed to.

Section 46, as reprinted, agreed to.

On section 47:

Mr. Renwick: This is the first reference we have had in the proposal with respect to the youth court for the purposes of the Young Offenders Act. That clause establishing the united family court as the youth court will be repealed on April 1, 1985, when the 16- and 17-year-old young offenders come under the Young Offenders Act, as such.

The Young Offenders Act states that the youth court means "a court established or designated by or under an act of the Legislature of the province, or designated by the Lieutenant Governor in Council, as a youth court for the purposes of the act."

This is obviously an interim arrangement and perhaps the Attorney General would comment on the question of jurisdiction and whether or not this court meets the requirements of a youth court, as envisaged by the Young Offenders Act.

My second question, so that I will not delay it too long, is: should the Young Offenders Act, Canada, be included in the list set out in the schedule to this part III? I thought it probably should.

Hon. Mr. McMurtry: Yes. But not before April 1, 1985. Or now, yes--

Mr. Renwick: Because it could be in force at the end of this month.

Hon. Mr. McMurtry: Yes, I see what you mean.

Mr. Renwick: I do not pretend to be an expert on all the background of the Young Offenders Act, but I had the sense from the reading I have done that the intention was, in some way or other, to segregate youth courts from other courts.

If this is simply a transitional provision, I do not think we need tarry on it, but I would be interested to know what the intentions of the Attorney General are, since April 1, 1985, is not very far away.

Hon. Mr. McMurtry: I think it is fair to say that the issue is still being debated as to the identity of the judges to be designated as the youth court for dealing with the 16- and 17-year-old offenders.

Mr. Renwick: And the facilities?

Hon. Mr. McMurtry: And the facilities, in relation to the ministries of Community and Social Services and Correctional Services. So there has been no decision made in relation to which court would be designated as a youth court for the 16- and 17-year-olds.

Mr. Renwick: Is this mainly because of the funding arguments that are still outstanding between the federal government and the provincial government?

Hon. Mr. McMurtry: That is only part of it. Of course, that is a matter of some concern to us, but the issue as to whether or not family and juvenile court judges, as they are now known, should be designated as youth court judges for 16- and 17-year-olds, as opposed to provincial court criminal judges, is an issue which goes somewhat beyond the issue of funding.

Mr. Renwick: At least for the time being, I take it the jurisdiction with respect to young offenders is with the Ministry of Community and Social Services for those who are responsible under--

Hon. Mr. McMurtry: For those up to age 16, yes.

Mr. Hodgson: Do you think the present family court judges will be carrying on the young offenders court?

Hon. Mr. McMurtry: Yes, they are designated as a youth court for the young offenders up to the age of 16. As of April 1, 1985, when the 16- and 17-year-olds will be regarded as youthful offenders as opposed to adult offenders, the decision is still to be made as to which courts will be designated as the youth courts for the 16- and 17-year-old offenders who, up until April 1, 1985, will still be dealt with in the adult courts.

Mr. Hodgson: How many new judges do you think it will take to handle that in the province?

Hon. Mr. McMurtry: It really depends on whether we utilize both the provincial court criminal and provincial court family divisions. If we are only to designate provincial court family judges as judges to preside in the youth courts for the 16- and 17-year-olds, this obviously would involve a relatively significant number of additional appointments. I am sorry I cannot give you any actual ball-park figures as far as the numbers are concerned, Mr. Hodgson.

Mr. MacQuarrie: There may be some transfers.

Hon. Mr. McMurtry: Yes, that is certainly a possibility.

Mr. Breithaupt: Would you foresee a separate division being created at this point? Is that one of the options or is it more likely that all the family court judges and some of the criminal court judges will jointly handle this new area of responsibility?

Hon. Mr. McMurtry: I think that is more likely.

Section 47, as reprinted, agreed to.

Section 48 agreed to.

On section 49:

Mr. Elston: If it turns out that the unified family court does decide to put in a conciliation service, I believe it would be of some benefit.

Hon. Mr. McMurtry: We have one in now.

11:50 a.m.

Mr. Elston: If there is an expansion or whatever; once they make the decision, I presume the funding is made available. Are they required to work to their best efforts to maintain their own internal workings of that conciliation service?

Mr. Perkins: In response to that question, the conciliation service as it now operates in the unified family court operates with two staff persons who are part of their staff complement.

Their role is not to engage in counselling and not to engage in any sort of extensive mediation between the parties because it is obvious they would be swamped if they attempted to do that. They operate as a clearinghouse for referrals out and so it is possible for us to maintain the service on that basis in the court with a couple of staff persons.

If there were to be expansion, the whole structure of mediation or conciliation would be looked at again to see how the service could be best be delivered.

Mr. Elston: It is not what I was anticipating by the words "conciliation service." They are not going to be sitting down and doing a lot of intensive work trying to find a common ground; they are actually referred when matters for common ground may have already been struck between the parties.

Mr. Perkins: It depends on the case. If they feel there is a chance of hammering out an agreement in a relatively short time--and I do not mean in an hour and a half, I mean in four or five hours--they will do it, but if it appears it will be a long and protracted process requiring the assistance of counsellors, psychologists or psychiatrists, then they refer it out. The most difficult ones get referred out. The relatively straightforward ones get handled in-house.

Section 49, as reprinted, agreed to.

On section 50:

Mr. Chairman: Mr. MacQuarrie moves that section 50, as printed in the original bill, be deleted.

Motion agreed to.

Section 51 agreed to.

On section 52:

Mr. Renwick: Mr. Chairman, I would like to know why we cannot just simply delete the words, "even though they alter or conform to the substantive law" from subsection 52(1) in view of the addition of clause 1(a) to the bill. It seems such an odd phraseology that it strikes me that we would accomplish what we want to accomplish by the addition of clause 1(a) without having those words in subsection 52(1).

Hon. Mr. McMurtry: There is a very lengthy history to this. I lost count of the drafts after the 71st draft, but Mr. Perkins could assist us as to the very significant history in relation to this particular section.

Mr. Renwick: If there has been a significant history to it, I will leave it to somebody else to work out the interpretation question, but it does seem extremely odd to have those words in there.

Mr. Perkins: If the committee would like to hear a very brief history, I would be happy to give it. The very brief history is this:

The rules of our courts today contain a great deal of matter that is not procedure or practice but is substantive law. For example, there are certain rules that deal with the admissibility of evidence, whether it be in the form of affidavits or proof of facts on a reference; small points like that, which are nevertheless substantive. There are many other examples.

It is not sufficient to have rule-making authority for practice and procedure only. That is why there is a reference to substantive law. Some of the rules of the courts alter the substantive law in making, for example, hearsay evidence, information and belief admissible in an affidavit. Some of the rules merely repeat or confirm or, as the bill says, conform to what is the common law. So they in a sense codify it.

That is why you have those two expressions there. There were extensive discussions with Mr. Justice Morden and the other members of his subcommittee in arriving at just the right way of expressing it.

Mr. Renwick: It is an excellent presentation.

Mr. Chairman: Shall section 52, as reprinted, carry?

Mr. Renwick: I do not know where the schedule comes, but there should presumably be an amendment to the schedule.

Section 52, as reprinted, agreed to.

Mr. MacQuarrie: I move that the schedule to part III, the prodigious part of the bill--

Mr. Breithaupt: Would you add as well that the Young Offenders Act of Canada be added to the schedule, as I believe it should be?

Mr. McMurtry: Perhaps it should be in place of the Juvenile Delinquents Act of Canada, as suggested by Mr. Renwick.

Mr. MacQuarrie: Okay, I move that the schedule to part III substitute the Young Offenders Act of Canada for the Juvenile Delinquents Act of Canada therein.

Mr. Chairman: Does the committee agree? Agreed.

Shall the schedule, as amended, carry?

Schedule agreed to.

Section 53 agreed to.

Mr. J. A. Taylor: I gather in some of these sections you are grandfathering existing situations.

Mr. Renwick: Is it not funny? I thought there was another provision that permitted them to act in such capacities. We will come to it at some point in time.

On section 54:

Mr. MacQuarrie: This is the question that came to my mind essentially. Does the "except as authorized by the Lieutenant Governor in Council" wording contained in subsection 54(1) permit them to act as an arbitrator or conciliator, as the case might be?

Hon. Mr. McMurtry: Yes.

Mr. MacQuarrie: So we are not taking away a possible valued component of the arbitration or conciliation process. Up to this point in time then, I assume it was the Attorney General who gave consent to act, rather than the Lieutenant Governor in Council.

Mr. Renwick: How does this operate again? Provincial judges will cease to act as arbitrators or conciliators, is that correct?

Mr. Perkins: Generally speaking, they will. The old law was that they had to obtain the Attorney General's consent to act. There are one or two who have that permission now.

Mr. Breithaupt: That is an ongoing consent or one for a particular thing?

12 noon

Mr. Perkins: It is an ongoing permission. So those one or two who have that consent need not get the new consent of the Lieutenant Governor in Council. The old one continues to operate, so for anyone in the future who wishes to act in any manner other than a judge, the permission of the Lieutenant Governor in Council will be required. That could be for conciliation, or arbitration. It could be to head a royal commission.

Mr. Breithaupt: But we can expect these matters will be somewhat more rare in the future--

Mr. J. A. Taylor: I guess more specific.

Mr. Breithaupt: Yes, and more specific as well.

Mr. Perkins: Yes, to both. It has been pointed out recently that there is a problem in public perception of the status, independence, impartiality and so on of a judge who is at the same time engaged in some other venture. There will be increased scrutiny brought to bear whenever one of the judges asks for permission.

Mr. Breithaupt: When they were sitting in these particular matters, were they receiving additional fees or other financial benefits as an arbitrator or a conciliator?

Mr. Perkins: I do not have information on that, other than assumptions that they were. I know there is at least one case of a provincial judge who was permitted to maintain a private law practice. There was no question that the judge was receiving fees from the private law practice. We assume those who were doing arbitrations were also receiving fees.

Mr. Breithaupt: Will that be effectively brought to an end?

Mr. Perkins: It will certainly receive scrutiny. The Lieutenant Governor in Council has the discretion.

Hon. Mr. McMurtry: I cannot imagine except for the fact we have two part-time judges who go back to the 1960s that this would happen. It would not be my policy ever to provide for compensation or ever to recommend to the Lieutenant Governor in Council compensation over and above what they receive as provincial court judges.

Mr. MacQuarrie: Outside of expenses.

Hon. Mr. McMurtry: Yes.

Mr. Breithaupt: That is agreed.

Mr. Renwick: I do not understand why we preserve it so carefully for the Supreme Court judges and district court judges and remove it, at least inferentially, from the provincial judges. I notice in subsection 101(1), we specifically reserve--

Mr. Breithaupt: I guess it is because we want to get out of that business.

Mr. Renwick: --all of that permissive authority. Yet, we take it away, as they say in French, from the provincial judges. Is there any particular reason for making that very clear-cut distinction between the two levels of the judiciary?

Hon. Mr. McMurtry: I cannot really think of any--

Mr. Breithaupt: Except that you want to get out of the business for provincial judges, whereas the royal commission of inquiry for Supreme Court judges continues to be one of the ancillary opportunities or functions or responsibilities of a person in that position.

Mr. Renwick: I do not have a problem with the commission of inquiry. I was thinking more of the roles as conciliator, arbitrator or referee. I do not have any particular objection to it. I just do not know why provincial judges are treated in a different way than judges of the Supreme Court or the district court.

Hon. Mr. McMurtry: As I understand it, the wording is a little different, as we have already suggested, because of the two remaining part-time judges, but under subsection 54(1) a provincial court judge can be authorized by the Lieutenant Governor in Council to do precisely what is contemplated by subsection 101(1). The difference being, I guess, that in subsection 101(1) it must be authorized by an "act of the Legislature," whereas under section 54 we can do it by order in council.

So, I guess it can be said that section 54 actually provides a greater degree of flexibility in relation to the availability of provincial court judges to take on duties such as Judge Beaulieu did in relation to his inquiry into vandalism and as Judge Rosalie Abella did in relation to the access to legal services for the disabled.

Section 54 agreed to.

On section 55:

Mr. Breithaupt: It is interesting that in section 55 we have these three blocks of people depending upon their appointments. How many are there in each of these categories, generally speaking, not perhaps the actual number? Are there, for example, a number who are yet to approach 75 who were appointed those many years ago?

Hon. Mr. McMurtry: Only one.

Mr. Breithaupt: Back in the days of a Liberal government, it would appear, if it is July 1, 1941.

Hon. Mr. McMurtry: Yes, there still is one provincial court appointment made during Mr. Hepburn's tenure.

Interjections.

Mr. Breithaupt: Otherwise, as judges move through these categories, is there a practice to continue--

Mr. J. A. Taylor: Grandfather?

Mr. Breithaupt: Oh, I am sure they are probably all grandfathers.

Is there a practice to ordinarily continue on a year-by-year basis, or is this becoming less used? It may be very hard to make a general comment on that, I suppose. I was just wondering how you are using the older, longer-serving members of the bench, whether they are being used into these higher ages, or not.

Mr. Beecroft: Mr. Chairman, I can provide some information on that. I believe there are 12 judges who sit primarily on the criminal division who are beyond retirement age and who are continuing on an annual basis with the consent of the chief judge. In the family division, at the present time, there may only be one judge out of 230 provincial judges in total. So, there are a small number of judges who do continue on a part-time basis after retirement.

Mr. Chairman: Is there anything further?

Mr. T. P. Reid: Are we going to get any more judges?

Hon. Mr. McMurtry: I see no reason not to.

Mr. Renwick: Murray Elston looks eligible this morning.

Mr. T. P. Reid: Is a shortage of judges not part of our problem?

Mr. Breithaupt: That Murray Elston will be eligible?

Mr. T. P. Reid: It surely has not come to that.

Section 55 agreed to.

Section 56 agreed to.

On section 57:

Mr. Renwick: It is my understanding that the process means that no provincial judge can be removed from office unless the last stage in the proceedings is an address of the assembly and an order of the Lieutenant Governor.

Hon. Mr. McMurtry: That is certainly my understanding.

Mr. Renwick: So any judge or any master who is going to be removed, would have to be removed by an address of the assembly.

Hon. Mr. McMurtry: Yes.

Mr. McMurtry: Has it ever been done?

Hon. Mr. McMurtry: We we have never had that provision before.

Mr. Renwick: Oh, I thought it had been in the revised statutes. Is that a new provision?

12:10 p.m.

Hon. Mr. McMurtry: We have been able to do it by order in council.

Mr. Renwick: Up until this provision--and now it requires to be addressed by the assembly.

Hon. Mr. McMurtry: Yes, we could do it by order in council after a recommendation by a Supreme Court judge following a public inquiry, but we have gone this additional step to still involve the Supreme Court judge and a public inquiry and also to require the vote of the assembly.

Mr. Breithaupt: Yet that pattern has not, even as we have seen, been used in recent years. When was the last time that an order in council was necessary, rather than--

Hon. Mr. McMurtry: There was a judge in Ottawa, and we went to an order in council. I recall the case very well. I am not going to mention the judge's name, but it was a provincial court judge in Ottawa who went through a public inquiry before Mr. Justice Robbins, who recommended his removal, and an order in council, as I recall, was passed.

There is a possibility that he resigned following the recommendation before the order in council passed. My recollection is that we actually did pass an order in council.

Mr. Renwick: Subsection 57(2) would be the one occasion where we could avoid the cabinet and go directly to the Lieutenant Governor.

Hon. Mr. McMurtry: Yes.

Mr. Renwick: Plant the seeds of revolution.

Section 57 agreed to.

On section 58:

Mr. Breithaupt: On section 58, again the Advocates' Society has several points. It would appear that the matter with respect to the Associate Chief Justice was not included, and the other comment with respect to individuals not, of course, participating in proceeds involving complaints against themselves would have been, to me, rather self-evident.

Hon. Mr. McMurtry: I am sorry, the second part of your--

Mr. Breithaupt: The comment about the chief judge or the senior master not participating in proceedings involving complaints against themselves, which I thought would have been rather obvious.

Mr. Beecroft: The Advocates' Society agreed with that.

Mr. Breithaupt: On this matter of adding the Associate Chief Justice, is there any reason why you have not bothered--that is not the right word--why you have not done something?

Hon. Mr. McMurtry: This is a policy matter for the ministry and myself. We did not have any discussions that I am aware of with the Advocates' Society.

There is no question but that the Associate Chief Justice of Ontario ranks very high in precedence, and the particular Associate Chief Justice of Ontario is a very distinguished member of the judiciary. The difficulty is in maintaining a balance between the provincial court judiciary and the Supreme Court judiciary. It is a very delicate balance.

I think in some provinces, for example, the provincial court judiciary have resisted the involvement of any other judiciary. In other words, they have taken the position that when it comes to disciplining members of the provincial court judiciary, the senior members thereof, plus any other appointees such as the treasurer of the province's law society or other lay appointees, should be quite sufficient.

They have resisted the involvement of other courts, while we have gone the opposite route and we have tried to maintain quite a delicate balance and also a manageable balance.

While a good deal could be said for adding the Associate Chief Justice of Ontario--a very legitimate argument could be made out for that--it becomes a little difficult when one says: "We should add the Associate Chief Justice of Ontario but not the Associate Chief Justice of the High Court. If we add the Associate Chief Justice of the High Court, why not the associate chief judge of the other provincial courts or the associate chief judge of the district court?"

I might say that the chief judge of the district court will be for the first time a member of the Ontario Judicial Council.

Mr. Breithaupt: With respect to the two other persons, the two lay appointees, who are the persons at the moment?

Hon. Mr. McMurtry: Bishop Arthur Brown and Dr. Lita-Rose Betcherman. Both are very distinguished people. Dr. Lita-Rose Betcherman is a distinguished author and has done a great deal in the area of labour relations. She is a former member of the Ontario Human Rights Commission.

Mr. Renwick: I am not proposing that you should change it now because you have obviously made a policy decision about it, but the concern which I had, particularly in relation to your comments about balance, is the quorum provision.

It is such a relatively small council and if the majority is to have the capacity to exercise all of the jurisdiction and powers of that council, it does run a little bit contrary to your view about the balance that is there, because in theory none of the representatives of the higher courts could be present when it was exercising its functions.

If I add up the actual numbers correctly there are nine, with the possibility of 10 if the senior master is there. A quorum

where there are nine persons--as there are likely to be in most cases--would then be five.

I can understand the delicacy of some of these questions as between the various levels of the court, but I think the judicial council would be significantly improved if the Associate Chief Justice of Ontario and the Associate Chief Justice of the High Court were added to increase the numbers to maintain an element of balance if the quorum question arose, so that there would always have to be--if my mathematics are correct--the assurance of a representative of the higher courts on the judicial council for provincial judges.

I recognize the numbers that are involved in it, but it seems to me to be quite important to have at all times as part of the quorum at least one, if not more, of the representatives of the High Court or of the district court on the judicial council for provincial judges. I thought the simplest way to do that would be to add the Associate Chief Justice of Ontario and the Associate Chief Justice of the High Court.

12:20 p.m.

Hon. Mr. McMurtry: Except that I think that tilts the balance very significantly away from the membership of the senior judges of the provincial court.

In other words, the provincial courts take the position that while they welcome the involvement of the senior members of the judiciary in the district court and the Supreme Court, they believe very strongly, and I think legitimately, that the judges of the other courts should not dominate a judicial council which really only has jurisdiction in relation to provincial court appointments.

Mr. Breithaupt: Following Mr. Renwick's comments, it seemed to include the requirement of having one of the senior appointees present. But from the fact that the Chief Justice of Ontario shall preside over the judicial council, will it mean that he will have to be present to make up the quorum in any event?

Hon. Mr. McMurtry: Yes, it has always been my understanding that he always is.

Mr. Renwick: Thank you, Mr. Breithaupt. That solves one of my problems.

Section 58 agreed to.

On section 59:

Mr. Breithaupt: We do not set out the method or procedure of appointment of the two lay appointees, as I recall in paging through, although I may have missed it. Is there a term of appointment? Is it the intention to have these overlap so there is some experience available to a new person from the other lay appointee?

Just how do you deal with the mechanics of the appointment? Would you not think it might be useful to have the terms or the practice included in a little more detail in section 58?

Hon. Mr. McMurtry: I think when we were only talking about two appointees it is not really necessary. It is obvious, too, that there is a total discretion in relation to who these appointees are.

Mr. Breithaupt: And the length of time?

Hon. Mr. McMurtry: All order in council appointments of this kind, as a matter of practice--I should not say all--are for a three-year duration. It is quite true that we have not spelled that out in the act.

Mr. Breithaupt: Perhaps the Attorney General would consider, by the time the bill comes before us again in the House, whether it would be useful to set out in somewhat more detail how and for what term the lay persons are appointed, considering there are only two.

On the other hand, it may be useful so that persons looking through the statute can know the length of term, if it is the ordinary case, and the matter of the overlap, if that is considered to be a useful function, and also the matter of reappointment. It may be such a general theme with respect to these appointments that it is thought to be known and understood by all. However, if it were set out, even by expanding clause 58(1)(h) with a line or two, it might be useful.

Hon. Mr. McMurtry: I will certainly consider that, Mr. Breithaupt, thank you.

Section 59, as reprinted, agreed to.

The committee recessed at 12:24 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
COURTS OF JUSTICE ACT
MONDAY, MARCH 5, 1984
Afternoon sitting

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Grande, T. (Oakwood NDP)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitutions:

Hodgson, W. (York North PC) for Mr. Eves
Kells, M. C. (Humber PC) for Mr. Mitchell
Reid, T. P. (Rainy River L-Lab.) for Mr. Spensieri

Also taking part:

McMurtry, Hon. R. R., Attorney General (Eglinton PC)

Clerk: Arnott, D.

From the Ministry of the Attorney General:

Beecroft, D. A., Counsel, Policy Development Division
Perkins, C., Counsel, Policy Development Division
Stone, A., Senior Legislative Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, March 5, 1984

The committee resumed at 2:14 p.m. in committee room 1.

COURTS OF JUSTICE ACT
(continued)

Resuming consideration of Bill 100, An Act to revise and consolidate the Law respecting the Organization, Operation and Proceedings of Courts of Justice in Ontario.

Mr. Chairman: The clerk has just distributed a few more amendments that the Attorney General (Mr. McMurtry) proposes to Bill 100. The clerk is also distributing the summary of recommendations on Bill 122 and Bill 123 to all members of the committee.

We have received some communication from the legal firm of Stephens, French, McKeown. The letter is from Mr. Paul French, who is the counsel to the Provincial Judges Association of Ontario (Criminal Division) and the Ontario Family Court Judges' Association. In the letter, he makes comments in regard to the Courts of Justice Act, section 89. Copies of the letter have been distributed by the clerk for the committee's perusal.

I think we left off with section 60 of the Courts of Justice Act. Is there any discussion on the section?

Mr. Renwick: We had not completed section 60.

Mr. Chairman: No, we were just beginning, Mr. Renwick.

On section 60:

Mr. Renwick: My only comment is about the purpose subsection 10 serves and the circumstances under which the Attorney General would make all or part of the report public. Is it simply because one cannot forecast the circumstances?

Hon. Mr. McMurtry: As I recall, this was a recommendation in the report by former Chief Justice Gale done at my request for the ministry. The previous legislation was quite silent on what, if any, part of a report of the Ontario Judicial Council to the Attorney General should be made public, bearing in mind its proceedings are in camera for a very good reason. Unfounded allegations are often made and it would be unfair to give a lot of publicity to allegations that turn out to be unfounded in so far as the judiciary is concerned.

Obviously, there were cases, however--and I can think of one or two--in which it is in the interest of the administration of justice and in the public interest to make at least a part of the report available to the public rather than to maintain the perception and the reality of a sort of shroud of silence.

For example, I can recall a situation in which a judge made some, quite frankly, ridiculous remarks in relation to the capacity of a female to give credible evidence during the period of menopause. This matter was referred to the judicial council; although the council did not feel it warranted further proceedings, it obviously was a case in which the concerns of the judicial council over such remarks should be made public. Whether or not all of a report should be made public, of course, would vary with each case.

The Attorney General has to have some degree of flexibility in making portions of a report available if he deems it to be in the public interest. Certainly, this was the view of the Gale report.

For the section to say the Attorney General shall make the report public or not make the report public would create a situation of relative inflexibility, if I recall that report and the discussions we had. It is something new that has been built into the legislation in order to address public concerns over matters considered by the judicial council, but which the judicial council does not feel require a further inquiry.

Mr. Renwick: It is one of those situations where I do not know how one improves upon it. I recognize both sides of it.

I do not personally recall you ever having made any report public in your time as Attorney General.

Hon. Mr. McMurtry: I think I have made portions of reports public, yes.

4:20 p.m.

Mr. Renwick: No further comments.

Section 60 agreed to.

On section 61:

Mr. Renwick: I do not want to deprive the Legislative Assembly of anything we have agreed we should have, but is there not a problem about the report of an inquiry on the removal being made publicly available? Does not the same kind of question arise?

Hon. Mr. McMurtry: The very fact that there was an inquiry into the Public Inquiries Act would require that the proceedings be in public.

Mr. Renwick: It would have to be in public?

Hon. Mr. McMurtry: Yes.

Section 61 agreed to.

On section 62:

Mr. Renwick: May I just raise one question under section

62, the question of jurisdiction for the trial of indictable offences. The "or," the disjunctive, concerns me. Are we saying there that, if by any chance one is not a member of the bar of one of the provinces of Ontario and happens to be one of the provincial judges who is not such a member, he or she has to have been in office for five years? Is that what we are basically saying?

Hon. Mr. McMurtry: Yes. It is sort of a grandfather clause.

Mr. Breithaupt: So that a nonmember of a provincial bar in Canada with less than five years' service cannot deal with indictable offences?

Hon. Mr. McMurtry: No, not in Ontario.

Mr. Renwick: And then in addition has to be designated.

Mr. Breithaupt: Why would you simply not phrase it that only a provincial judge designated by Lieutenant Governor in Council can deal with this area and simply designate everyone except the several perhaps that do not fit into that category?

Mr. Renwick: I think we do in subsection 62(1).

Hon. Mr. McMurtry: I think the Criminal Code simply says a provincial court judge must be designated by the Lieutenant Governor in Council in order to exercise the jurisdiction conferred on a magistrate under part XVI of the Criminal Code.

In effect, we are going further. What we are trying to do here, obviously, is to discourage any-- I guess somebody already talked about the requirement of 10 years at the bar a bit further back--

Mr. Breithaupt: For appointment as a--

Hon. Mr. McMurtry: Yes.

Mr. Breithaupt: Since you would not likely designate a person--

Hon. Mr. McMurtry: Yes.

Mr. Breithaupt: Why do you not say so?

Hon. Mr. McMurtry: This simply deals with judges who have already been appointed. There are several lay judges still exercising jurisdiction.

Mr. Breithaupt: But you can cover it either way simply by your designation.

Hon. Mr. McMurtry: In other words, you are saying that clauses (a) and (b) are really not necessary?

Mr. Breithaupt: Yes, I think that is the case. If you

simply say a provincial judge shall not exercise the jurisdiction, etc., unless that judge is so designated by the Lieutenant Governor in Council, you would sort out your problem right away.

Hon. Mr. McMurtry: In any event, we are only dealing with existing judges because any future judges are caught by section 53.

Mr. Breithaupt: You have designated those several lay judges who are experienced but perhaps clearly not members of the bar?

Hon. Mr. McMurtry: Yes.

Mr. Renwick: I think I would prefer to leave it in simply because the question may very well arise as to whether or not a person who has not been called to the bar but had in fact served as a provincial judge for five years would be eligible.

Mr. Breithaupt: We know there are only several of these and there will not be any in the future. Therefore, the fact of the designation would resolve the problem, would it not? However, for the moment you may wish to consider this and leave it as is.

Hon. Mr. McMurtry: The fact is I do not have any quarrel with what you say. I think it probably could be accomplished.

Mr. Breithaupt: You might choose a further amendment at the time the bill comes back to this if it would make it tidier. If you want to leave it the way it is, that is fine with me. This seems a bit unnecessary.

Hon. Mr. McMurtry: Yes, I think you may be right.

Mr. Breithaupt: If there will not be any more provincial judges appointed who are not members of the bar, and that for 10 years, then you are only dealing with several persons presumably.

Hon. Mr. McMurtry: Yes.

Mr. Breithaupt: Again, when you are coming up with a statute that is likely to be with us for some time, if we can clear away something that is not really useful for the future, I think it is just as wise to do so.

Mr. Chairman: Any further comments, Mr. Minister?

Hon. Mr. McMurtry: No.

Mr. Chairman: We are talking about section 62, are we not? I think we passed that, did we not?

Section 62 agreed to.

On section 63:

Mr. Renwick: I am worried about them being commissioners for taking affidavits. It seems a pretty broad extension of jurisdiction.

Section 63 agreed to.

Mr. Renwick: Mr. Chairman, with the indulgence of the committee, I would like to deal with my two amendments. By happenstance section 64 is part of it, but section 67 is the major point of my amendment. If the committee is in agreement, I would like to deal with both amendments at the same time and deal with the amendment to section 67 and the amendment to section 64 together, because I think that would clarify what I am attempting to put before the committee.

Mr. Chairman: The committee agreed to that earlier, Mr. Renwick. You may proceed.

Mr. Chairman: Mr. Renwick moves that sections 67, 68, 69, 75 and 78 of the bill be struck out and the following substituted therefor:

"67(1) The provincial courts criminal division, the provincial offences courts and the provincial courts family division for the counties and districts and the small claims courts and the provincial court civil division are amalgamated and continued as the single court of record named the provincial court.

"(2) The Lieutenant Governor in Council may designate divisions of the provincial court.

"(3) The provincial court shall be presided over by a provincial judge."

And moves that the rest of the bill be amended accordingly.

Mr. Renwick: You will note the French-language amendment which I have prepared for the committee.

Mr. Chairman: Mr. Renwick also moves that section 64 of the bill be struck out and the following substituted therefor:

"64(1) The Lieutenant Governor in Council may appoint a provincial judge as chief judge of the provincial court.

2:30 p.m.

"(2) The chief judge of the provincial court has general supervision and direction over the sittings and the assignment of the judicial duties of the provincial court.

"(3) The Lieutenant Governor in Council may appoint one or more provincial judges as associate chief judges of the provincial court and may direct that an associate chief judge of the provincial court supervise and direct the sittings and the assignment of the judicial duties of a division of the provincial court designated under subsection 67(2).

"(4) Where the chief judge of the provincial court is absent from Ontario or is for any reason unable to act, all the powers and duties of the chief judge shall be exercised and performed by an associate chief judge designated by the chief judge, or where

both are absent or unable to act, by a provincial judge designated by the chief judge."

Mr. Renwick: My concern is simply to draw to the attention of the committee that, while we have gone some way to create provincial courts out of each of the various divisions of the court in the various counties and districts, we have in fact ended up with four specific provincial courts: the provincial court criminal jurisdiction; the provincial court family division; the provincial court civil division; and the small claims courts.

I was just anxious to bring before the committee for discussion the background of the thinking of the Attorney General in not moving to create a single provincial court with the appropriate divisions.

My reasons for wanting to do so are basically that you will note we have just passed section 62, which establishes the jurisdiction of each provincial judge as being capable of being exercised in any or all of those courts. At the same time, we run grave danger of overspecialization in the court without the kind of necessary flexibility that would be introduced by recognizing that a judge of any one of the courts we are establishing is capable of exercising and can exercise all the judicial duties in each and every one of the courts.

You may recall I had asked the Attorney General and he had confirmed that the actual patent of appointment is identical for all of the judges and is consistent with the provisions of section 62, which we have just discussed.

It does seem to me that if we do create a district court of Ontario and a Supreme Court of Ontario, the time will have come when we should have a provincial court of Ontario with the necessary flexible provision to provide for its division, from time to time, into whatever are the appropriate divisions; presumably, in the initial instance, the very divisions that now exist.

I would appreciate it if the Attorney General would comment on that proposal.

Hon. Mr. McMurtry: As I indicated in our earlier discussions, I think there is a good deal of merit to the concept of having our provincial court judges exercising different jurisdictions. It is my own personal view--admittedly not having had the benefit of serving as a judge--that judges would benefit in the provincial court by exercising criminal court jurisdiction, family court jurisdiction and civil court jurisdiction.

My own view is that the provincial court judiciary might be well advised to look at that concept to a greater extent than it has. Obviously, at this time, there would be very significant administrative and other problems in relation to amalgamation, but the general concept of judges exercising a greater variety of jurisdiction is one that has always appealed to me.

I have discussed this informally with some of the provincial

court judges and because of the complexities of the law in these different areas, many of them are of the view they are more effective in concentrating on one area of law, notwithstanding the fact that justices of the Supreme Court and county court judges are expected to exercise different jurisdictions.

Given your interest in the matter--and it may be a concept with some appeal to other members of the committee, as well--I would be prepared to communicate it to the chief judges of the provincial courts and their associations as a concept suggested by a very senior member of the Legislature and worthy of their consideration.

I think you can appreciate why it would be difficult to proceed with such an amendment at this time, without a good deal of ground work and without achieving a reasonably high degree of consensus within the judiciary. To my knowledge, and I have been responsible for the appointment of a very significant number of judges, the people who have been appointed have all accepted the appointment on the basis they would be exercising a specific jurisdiction. To change that without a consensus within the ranks of the judiciary would not be acceptable.

The concept is worthy of consideration, however, and worthy of a great deal of discussion, and I am quite happy to do what I can to motivate such discussion. While I cannot accept your proposed amendments at this time, they could very well act as a useful catalyst for such a discussion.

I do not know whether Mr. Perkins or Mr. Beecroft would like to add anything to this discussion, because I am expressing a personal view, although both of my senior advisers have heard me express a similar view in their company elsewhere. Would either of you like to offer any comments?

Mr. Beecroft: I do not know if there is much I could add, but just as a practical matter, the administrative difficulties that would arise in doing this overnight, so to speak--

Mr. Renwick: Yes, I understand.

Mr. Beecroft: --would be quite enormous. What would happen to the existing chief judges? What would happen to the existing judges?

Mr. Renwick: I am sure someone else has said it at some point, but you can put an argument that justice is a seamless piece of cloth and those who are charged with the administration of the judicial function in our society should strain to keep within the generalist principle, as has certainly been true of the Ontario Court of Appeal, certainly true of the Supreme Court of Ontario, certainly true of the county courts and what will be the district courts.

There has been no conceptual variation, even though one only has to read the various cases within those courts to find, as a matter of practice, there is a degree of specialization with

respect to those judges who are applying their skills to the cases that come before them. I think that is rather a different matter and likely to continue to a degree, in any event.

2:40 p.m.

The provincial court judges, family division, are now entering a period in which they are faced with dealing with young offenders in accordance with the Young Offenders Act, which is basically a reassertion of the due process of the criminal system in favour of young offenders and a degree of exercise of criminal jurisdiction totally different in its philosophy from, say, the Juvenile Delinquents Act that we are going to run into situations where judges should be able to move with some degree of ease.

I do not think for a single moment that there is not a natural tendency in people to feel more comfortable if they are doing, day in and day out, the kind of work at which they feel most competent, rather than to suddenly find themselves sitting in a court dealing with other areas. I think that is a part of human nature generally, and I do not think that should necessarily militate against a concern about the conceptual framework of the provincial court in relation to the tradition of our courts.

I welcome the move forward which is reflected in the act by at least making clear that these are separate courts, complete courts, and that there are not truncated courts scattered among the various divisions, districts and counties in the province.

That was the purpose of my amendment. I think it would be helpful rather than leave it for 100 years until this bill comes back again. Maybe it is a matter that could be looked at within the next five years to see whether or not the administrative framework could not be developed to move towards that kind of court.

I also know that there are all sorts of sensitivities about position, rank, role, and so on, which have to be given due regard, but no more than due regard, in working out a new system. I am encouraged by what the Attorney General has said. I would hope that within the next five years that it would be seriously canvassed by the judges of the court and by the officers of your ministry.

Mr. T. P. Reid: This is along the lines of Mr. Renwick's statement, but in a somewhat different focus and almost in contradiction.

The question may not be apropos to the bill particularly, but the Attorney General recently made a trip up to northern Ontario. You are aware of the problems of natives before the court and the different culture they come from. One of the continuing problems seems to be that a lot of them find themselves in court not fully understanding why they are there, because the things they are in court for are something that--for good or ill, I make no value judgement on that--are acceptable within the Indian or native communities.

Is there any view of yours or of your ministry in terms--I guess in contradiction to Mr. Renwick--of having people who would have particular expertise, or understanding or education in native cultures as they apply to the court?

Hon. Mr. McMurtry: Yes, we would. What we are very anxious to do is to develop a native justice of the peace program. As you know, there have been some modest beginnings in this direction.

Certainly, in the last few months we have taken on in the ministry a co-ordinator who has taken this on as part of his mandate. He is Mr. Stan Joli, who may be known to you. He is the co-ordinator of this program. He is a very excellent individual and is very knowledgeable about the problems related to native justice. We really believe that this should be a very high priority, I agree with you.

I do not pretend to know nearly as much about these problems as someone who represents a northern riding where these issues are a matter of concern on a day-to-day basis, but certainly my own involvement with the native community would lead me to believe that this is a very important issue.

When I was Solicitor General I did what I could to increase the native band constable program, and there is the obvious analogy between the two. I would hope this native justice of the peace program will see some real progress within the next year or two.

Mr. MacQuarrie: On the Ombudsman: I happened to be with the Ombudsman committee on the trip up north. At one of our stops one of the members of the committee suggested to the group that they awaken their political sensitivity, that maybe one of their group could be an Attorney General.

Mr. Breithaupt: What else did Mr. Piché say?

Mr. Chairman: I wonder if that is the member we are talking about?

Mr. Breithaupt: I am sure.

Mr. MacQuarrie: I do not think so.

Mr. T. P. Reid: I suspect he is a member of the other party.

Mr. J. A. Taylor: Back to Mr. Renwick's amendment, because I think he is anxious to see that put to a vote.

Mr. Chairman, possibly you or the Attorney General could indicate whether there is flexibility--as I surmise there would be--within the existing structure of the various divisions of the provincial court to reassign judges so there is experience in the various areas of activity, whether it be the criminal, the family, or the civil division. Without going as far as Mr. Renwick does in

his amendment, would there be some potential for flexibility in that regard?

Hon. Mr. McMurtry: Yes, there certainly is the potential for flexibility. To a very large extent, the breadth of the potential really will be determined by the views of the judiciary themselves. Obviously the Attorney General cannot assign a judge to any specific court. Once the judge is appointed the matter of where that judge sits is clearly outside the jurisdiction of the Attorney General.

On the advice of the Attorney General a judge may be assigned to a particular court in a particular community, but from that point on assignments are done through the chief judge's office. As I mentioned a moment ago, I really think it would be a question of trying to encourage this type of flexibility within the ranks of the judiciary.

My own view is that this would add a special dimension to the credibility of the provincial court, which I think is an excellent court. If, for example, judges within the existing framework were prepared to exchange responsibilities for a period of weeks, from an administrative standpoint it should not be too much of a problem in some of the more populous areas to arrange for a judge who has been sitting in criminal court to sit for several months in family court and vice versa. In some parts of Ontario it obviously would be a greater administrative problem.

Mr. J. A. Taylor: I did not see any prohibition against that kind of thing in the bill. That is why I thought there might be the potential there which, over a period of time and in a practical way, could address some of the advantages that Mr. Renwick might see in eliminating the divisions entirely.

Hon. Mr. McMurtry: As you know, we do have provincial court judges in certain areas of the province who exercise both criminal and family jurisdiction now.

2:50 p.m.

Mr. Renwick: There is a bit of a barrier; I imagine we could read section 64 either way, but one could read it as creating an obstacle to the assignment by reason of the authority vested in the chief judges to make assignments within this division. Whether you could cross the divisions or not through the use of those sections, I do not know. I suppose it could be read either way.

Mr. MacQuarrie: I think the language of subsection 64(1) is broad enough that the Lieutenant Governor in Council could appoint the same judge to be the chief judge of both the provincial court, criminal division, and the provincial court, family division. It is that broad.

Mr. Chairman: Is there any further discussion on Mr. Renwick's motion?

Mr. Renwick: I do not care whether the motion is put or

not. I do not want to go down to a shattering defeat. I want to go down with honour.

Interjections.

Mr. J. A. Taylor: I want you to know we were contemplating supporting you on this until the discussion was finished and now, with all that flexibility in there, we are convinced maybe we should let the statute remain as it is.

Mr. T. P. Reid: I think it is as close as you have ever come to a victory.

Mr. Renwick: The amendment I got to the schedule to part III is about as close as I ever got to a substantive amendment. I will withdraw the motion.

Section 64, as reprinted, agreed to.

Sections 65 to 68, inclusive, agreed to.

On section 69:

Mr. Breithaupt: Mr. Chairman, the Justices of the Peace Association of Metropolitan Toronto raised a point about the addition of a new subsection 3, which would incorporate the provisions outlined in the Justices of the Peace Act, RSO chapter 227.

Has any consideration been given to that point? Perhaps we could have an explanation of why it has apparently not been thought necessary to do this.

Hon. Mr. McMurtry: It is a separate and quite comprehensive project standing by itself at the moment. Certainly, if it had been humanly or reasonably possible, we would have liked to have had that project concluded in time for passage of this legislation.

As you recall, the Mewett report has been the subject of a great deal of study and a great deal of work within the ministry. When some representatives of the Justices of the Peace Association were here during the public hearings, I gave them an undertaking that in the spring we would be producing comprehensive legislation that would reflect many of the recommendations of the Mewett report.

When that legislation is introduced, I would not see any problem in having it incorporated under the Courts of Justice Act. We have not really discussed that aspect of it, but it would be my own preference to see that also come under this legislation. It is a project being given a high priority in the ministry right now.

Mr. Breithaupt: It would make sense to include it, if at all possible, since we are attempting to bring all of the aspects of the administration of justice under one statute and knock out 20 or 30 others that have become redundant as a result of our efforts. If it could be included, it would be a positive way of

dealing with the results of the Mewett report, which has interested many of us.

Mr. Chairman: Anything further on section 69?

Mr. MacQuarrie: On section 69, I wonder if the Attorney General could look at it from the point of view of taking Mr. Breithaupt's statements into account, as to the prospect of some reference to the other court. Certainly section 69 is carried as it stands, but I just wondered whether a look could be taken at it to reflect some of Mr. Breithaupt's concerns.

Hon. Mr. McMurtry: Certainly that will have to dovetail with section 69, once we have the legislation introduced, I agree, Mr. MacQuarrie.

Section 69 agreed to.

Section 70 agreed to.

Section 71, as reprinted, agreed to.

On section 72:

Mr. Renwick: Mr. Chairman, as I take it, when a matter of contempt has been put over to another day, it is not necessary under this section that the contempt matter then be heard by a judge different from the judge before whom the contempt was committed. I take the only exception to that as being where it was in front of a justice of the peace and then it must be heard by a provincial judge.

Hon. Mr. McMurtry: Yes.

Mr. Renwick: Is there any merit in specifically providing that? Unless it is the kind of contempt which must be dealt with peremptorily, is there something to be said for having the contempt matter dealt with by a different provincial judge?

Hon. Mr. McMurtry: I am just having a brief discussion here with advisers, as it is quite obvious, reflecting on their extent, that the McGuigan proposals will have the effect of amending these provisions in so far as providing the requirement for the actual hearing before another judge is concerned. What I was trying to clarify in my own mind was the extent to which amendments to the Criminal Code would affect contempt in a provincial offences court. I must admit I am a little blurry on it.

Mr. Renwick: The question is whether that would be a criminal contempt, for the purpose of--

Hon. Mr. McMurtry: I am certainly a little fuzzy on that myself, but my adviser is telling me that our provincial offences court would be covered by the Criminal Code amendments.

Mr. Beecroft: The effect of the amendments that are before Parliament now would be to deal with contempt in the face of all of the courts; provincial courts--

Mr. Renwick: As long as they were courts of record, is that what you are saying, on the grounds--

Mr. Beecroft: It lists them all--supreme courts, county courts, provincial courts and any other tribunal that is designated, but it certainly covers all of the courts.

Mr. Renwick: The contempt is considered a criminal contempt.

3 p.m.

Mr. Beecroft: In the face, that is right. It actually defines the offences as disrupting judicial proceedings and publishing material that interferes with a judicial proceeding. It defines more clearly what contempt is.

Mr. Renwick: All right. I do not think there is any need to tarry, because you have provided for an appeal in here in any event.

Section 72 agreed to.

Section 73 agreed to.

On section 74:

Mr. Breithaupt: Who are the rules committee and what are the terms of their appointment? Can you tell us the number and what the composition is expected to be?

Hon. Mr. McMurtry: There are quite a few judges on the rules committee for the provincial court, criminal division. At the moment it is the same committee as for the provincial offences court, is it not?

Mr. Beecroft: It is all judges.

Hon. Mr. McMurtry: All of the judges?

Mr. Beecroft: No, the committee is all judges.

Hon. Mr. McMurtry: Oh, the committee is. There are no nonjudges on the committee.

Mr. Breithaupt: Those who sit at the moment are dealing with the provincial offences matters and the administration of criminal procedures.

Hon. Mr. McMurtry: Yes.

Mr. Breithaupt: These are all judges. How many are there?

Hon. Mr. McMurtry: A dozen?

Mr. Beecroft: Approximately a dozen.

Hon. Mr. McMurtry: The Criminal Code provides for a

rules committee in relation to the provincial court, criminal division. That is why we do not make reference to the provincial court, criminal division, in this particular part.

Mr. Breithaupt: You are required to appoint such a committee, following whatever procedures are normal, but you do not have to refer to it in your own statute.

Hon. Mr. McMurtry: I am reminded that the Criminal Code includes all of the judges on the bench; it is a little impractical, but there is nothing we can do about it.

Mr. Breithaupt: It would seem that, where provincial needs would vary as to the numbers available or the usefulness of having large groups, the statute might more practically read that there shall be one, its composition to be at the discretion of the Lieutenant Governor in Council of each province. That perhaps makes more sense, and therefore it cannot be accepted in its present form.

Hon. Mr. McMurtry: I am not sure they have written the federal Minister of Justice or not, but certainly it is my intention to write to suggest that there be some amendments to the federal Criminal Code in respect to this to provide for a manageable rules committee, because when you have a rules committee made up of all the judges, the result has been that there have been no rules.

Mr. Breithaupt: Quite clearly, a number of persons might be more particularly interested in that area and should, you would think, be given an opportunity to delve into the matters if they were of concern--

Hon. Mr. McMurtry: Yes.

Mr. Breithaupt: --whereas other judges might not have as great an interest.

Mr. MacQuarrie: Or talent.

Mr. Breithaupt: Perhaps even that.

Section 74 agreed to.

On section 75:

Mr. Breithaupt: This point was raised by Judge Pickett as well under the criminal division aspect--that is, the inclusion of the provincial name in the court so it would read, "The provincial court of Ontario (family division)." Is there any particular reason why that view was not accepted, or was it thought unnecessary as a result of the origin of the statute, which is clearly within Ontario?

Hon. Mr. McMurtry: There was some concern expressed about the length of the name. We described the court earlier as an Ontario provincial court.

Mr. MacQuarrie: For practical purposes, correspondence emanating from the court usually has the Ontario coat of arms on it, and the Ontario court buildings, to the best of my knowledge, are identified with the trillium.

Mr. Breithaupt: He raised the issue. I thought it was worth while to inquire. It may be that the name, as it now stands, is quite clear and practical for each of the divisions.

Mr. MacQuarrie: I think the courts tend to identify themselves quite closely with Ontario.

Section 75, as reprinted, agreed to.

Section 76, as reprinted, agreed to.

On section 77:

Mr. Chairman: Is there any discussion on section 77? If not, shall 77 carry, as reprinted?

Mr. MacQuarrie: This incorporates the amendments you distributed this morning.

Mr. Chairman: Yes. That is what I am saying here--reprinted.

Section 77, as reprinted, agreed to.

Sections 78 to 82, inclusive, agreed to.

On section 82a:

Mr. Chairman: This is a new section. Shall section 82a carry?

Section 82a agreed to.

Section 83, as reprinted, agreed to.

Section 84 agreed to.

On section 85:

Hon. Mr. McMurtry: There is a small amendment required, which has just been brought to my attention.

We want to amend clause 85(3)(p) by changing the words "prescribed by rules of the provincial court (civil division)." We want that to read "provided for by rules of court." I am advised this would ensure consistency with other provisions of the bill that provide rule-making authority.

Mr. Chairman: Shall the amendment carry?

3:10 p.m.

Mr. MacQuarrie: I think it should be moved by a member of the committee.

Mr. Chairman: Mr. MacQuarrie moves that clause 85(3)(p) be deleted and the following substituted therefor: "any matter that is referred to in an act that is provided for by rules of court."

Motion agreed to.

Section 85, as amended, agreed to.

On section 86:

Mr. Chairman: Any discussion on section 86?

Mr. Renwick: I have a very minor question because I do not understand it. Why are the clerks of the criminal division and the family division appointed under the Public Service Act? Why is the clerk under the provincial court, civil division, appointed by the Lieutenant Governor in Council?

Mr. Beecroft: That reflects the existing law. With respect to the civil division many of the clerks are just part-time clerks, especially in remote areas of the province where the business of the court is very small. It is only a part-time appointment, so they are not full-time civil servants.

Section 86 agreed to.

Mr. Chairman: We do not have a section 87. Would someone move that section 87 of the original be struck out?

Mr. Breithaupt: I think Mr. Renwick should do that so that he has an amendment that is accepted.

Mr. Chairman: Mr. Renwick moves that section 87 of the bill, as originally presented to the committee, be deleted.

Motion agreed to.

Mr. Breithaupt: Perhaps he could explain the amendment.

Mr. Renwick: I will ask my adviser.

Mr. Grande: No problem.

Interjection: It seemed a good idea at the time.

Section 88, as reprinted, agreed to.

On section 89:

Mr. Breithaupt: We had delivered to us just a few moments ago this bundle of material from Mr. Paul J. French, who writes that he is counsel to the provincial judges' association of the criminal division and the Ontario Family Court Judges' Association. He goes on in a five-page letter with a number of

items attached that presumably is worthy of some discussion. I have not had a chance to go through it in the last few minutes, but it may be that the Attorney General and his advisers are familiar with the views set out by Mr. French here and, no doubt, over some time.

Hon. Mr. McMurtry: We have not actually seen these. I am advised that Mr. French has not discussed these proposals for first amendments with the Ontario Provincial Courts Committee. I would even suggest that I simply give the standing committee an undertaking to see that these matters are discussed with the provincial courts committee. After my advisers and I have had an opportunity to reflect on these proposed amendments, if we think it is in the public interest to make them on third reading, we could do so.

It would be very difficult for us to have a meaningful discussion of these proposals when I have not had a chance to read Mr. French's letter and my advisers have not had an opportunity to reflect on it. I am very familiar with the history of the provincial courts committee, having been responsible to a large extent for its establishment. After reflecting on the views of the provincial courts committee, but before third reading of the legislation, I will be quite prepared to share my opinion and those of my advisers with the members of this standing committee.

Mr. Breithaupt: That would be satisfactory. I am sure Mr. French would realize that having received the items only this day, we could hardly be expected to be as knowledgeable and able to deal with them as promptly as he would no doubt prefer.

We will look forward to receiving in due course any items of correspondence or proposed amendments so that the bill, as it finally proceeds, can be changed if that is the considered opinion of the parties involved. I really do not think we can do very much more than that.

Mr. Renwick: The matters of concern to Mr. French in his capacity as counsel for the provincial judges association, criminal division, and the Ontario Family Court Judges' Association are set out with some clarity but at some length in his five-page submission, supported by the appropriate attachments so that we can understand it. A cursory look at the amendments should not put us off from expressing some comment about them.

I tend to agree with and am pleased that the Attorney General would consult with the Ontario provincial courts committee, but I would think we should draw attention very clearly to the concerns expressed.

At present, Mr. Edward Greenspan is the nominee under clause 89(1)(a). The secretary of the Management Board of Cabinet, Robert Carman, is the government nominee under clause (b) and by agreement between the two, the chairman is Alan Marchment, the chairman, president and chief executive officer of Guaranty Trust Co. The problem relates to the role of the deputy minister who has been assigned this onerous and difficult obligation and to whether it would not be wise to have an appointee of the government from outside the government service.

3:20 p.m.

Obviously, matters related to the financial arrangements of the provincial judges raise elements of concern in such a way that it may very well make sense that the person who holds the purse-strings or who is instrumental in making the decisions with respect to the purse-strings should not be a person who is a member of this committee for the purpose of making these recommendations.

Without knowing anything about how they operate, I do sense some merit in the suggestion that there is perhaps an element of conflict in that particular method of appointment. So all that is requested is that the person not be an employee of or under contract to the provincial government.

The second one is simply to regularize the proceedings by providing in subsection 89(2) that the matters be dealt with on an annual basis to provide a certain sense of regularity to what is taking place.

Of course, it is a matter of very significant concern when you realize that at the top of page 4 of the submission to us, and in the second paragraph, there is a discrepancy. I know these are averages and I know they do not necessarily apply to each and every one of the judges, but the discrepancy between the retirement income available to provincial court judges and the retirement income available to members of the county court is extremely broad.

Whatever all of the elements were that went into the dissatisfaction which finally expressed itself in the Valente case, I think the sooner these matters can be dealt with in a way that irons out some of these tensions, the better. Without imputing motives, I have a sense that a goodly part of the agitation is about their concerns related to the difficulties they face with respect to their retirement income.

The third matter is simply that the annual report of the committee contain recommendations and a request that the report then stand referred to this committee so there is some method of seeing that there is, not necessarily executive action but an opportunity for discussion to take place and some sense of public focus made to it.

I must say that I am constrained to think that there is some merit to each of these points and amendments to them, and I will certainly look forward to the point when the bill comes back into the House as to what the Attorney General will have to say about these matters.

I think we all have to bear in mind that the whole relationship is an extremely sensitive one, and I am sure that may well have accounted for the late arrival of this memorandum. It is about concern that the judges, or anyone speaking for them, even appear to involve themselves in legislation which deals with the very courts they sit in.

I certainly would not think it was inappropriate for

counsel on behalf of those two associations to have drawn these matters to our attention. I think we must accept the comment made by the Attorney General and await his recommendation when the bill comes back into the assembly to see whether, on a very cool look at those proposals and in the light of the history of that committee, those amendments, or ones substantially similar to them, might go some way to cooling out whatever remnant of heat there is.

I think again, without having studied the retirement provisions, there is a sense of anxiety which the very low level of their pension arrangements must cause a number of those judges.

Mr. J. A. Taylor: I would say the member for Riverdale (Mr. Renwick) has expressed the collective views of the committee fairly well.

Mr. Renwick: And with wisdom.

Mr. J. A. Taylor: When I speak of wisdom, I hesitate to express that in the collective sense.

Interjection.

Mr. J. A. Taylor: I say that only because the member for Rainy River (Mr. Reid) is here.

Section 89 agreed to.

Section 90 agreed to.

Section 91, as reprinted, agreed to.

On section 92:

Mr. Breithaupt: Mr. Chairman, we have just received a letter from Professor Carl Baar outlining some concerns and views with respect to section 92. He says, "At best, the section adds nothing and at worst, it does add to or strengthen the Attorney General's functions." I have not had the opportunity to read this item in detail, because again it has just been received by us.

Interjection.

Mr. Breithaupt: By us, yes. As he views the term "administration of justice," it seems somewhat different from the administration of the courts.

As we have only just received the item, perhaps again we will have to leave this in the hands of the Attorney General and his advisers to be commented upon at the appropriate time the bill comes back to us in the clause-by-clause deliberation in the House.

If two or three items happen to require further explanation at that time, it will not be a lengthy consideration, but perhaps we could ask that this be considered for further presentation and that at the present time the section be allowed to stand until some further clarification occurs, if that is possible.

Mr. Chairman: Was the Attorney General listening, I hope?

Hon. Mr. McMurtry: Yes.

Mr. Chairman: That is fine; some further consideration.

Hon. Mr. McMurtry: I was just going to point out that in section 96 we are proposing an amendment which at least goes part way to address the concerns of Professor Baar.

Mr. Renwick: On section 92, my response to that question is that I think the history of the attempt to sort this matter out would lead me to believe the judges are quite alert to the problems involved in this section. At the present time, they are prepared to agree that this is a solution to a problem. If it were something that had not been an ongoing matter of concern going back now for some years, I would be concerned about it.

3:30 p.m.

I even went to the trouble at lunchtime to go up and look in the Oxford dictionary to find out what "superintend" means. It certainly is very clear that the administration of the courts basically is vested in the Attorney General, unless you can find a law which says otherwise.

I really cannot feel, with the various elements within the court structure that, even if the Attorney General were so minded, he somehow or other could subvert the courts without running against people who are very alert to any such encroachment, intentional or unintentional. Of course, it would obviously be unintentional on the part of the present incumbent.

The row that has arisen in Alberta over questions that are somehow related to this very question is interesting. They have asked Ottawa to conduct some investigation, and I think the bar in Alberta now is conducting some investigation into the role of the provincial Attorney General in Alberta as to whether or not there has been an interference with the administration of justice.

I do not know how you are going to come up with a better solution than this particular solution in our own system, so I am certainly prepared to let it pass rather than to pass a bill with a vacuum in it.

I do not think the alternative of setting up some administrative body within the judicial machinery would be an alternative to the process; I think this is an adequate separation of function for the time being. If the present judges and those who succeed them are around, I cannot believe for a moment that the Attorney General would be able to use this power without in some way drawing comment if it were misused.

That is not a very jurisprudentially sound argument to meet Professor Baar's comments, but that is my sense of the discussion that has gone on ever since Dalton Bales was the Attorney General.

Section 92 agreed to.

On section 93:

Mr. Renwick: Again it is worth commenting that subsection 93(2) provides an appropriate method by which the Ontario Courts Advisory Council can on its own initiative consider any matter relating to the administration of the courts that it sees fit and make recommendations throughout the system. So they have an avenue, if they have agitation or anxiety about what is taking place, to deal with the matter.

I do not know why I should be supporting the Attorney General; I am, though.

Mr. Chairman: Just force of habit, probably.

Section 93 agreed to.

Sections 94 and 95 agreed to.

On section 96:

Mr. MacQuarrie: An amendment has been proposed by the ministry.

Mr. Chairman: Mr. MacQuarrie moves that section 96 of the bill be struck out and the following substituted therefor:

"96(1) In matters that are assigned by law to the judiciary, registrars, court clerks, court reporters, interpreters and other court staff shall act at the direction of the Chief Justice or chief judge of the court.

"(2) Court personnel referred to in subsection (1) who are assigned to and present in a courtroom shall act at the direction of the presiding judge or master while the court is in session."

Any discussion on the motion?

Mr. Breithaupt: Do you want to place the Revised Statutes of Ontario reference, as well, Mr. MacQuarrie, since that was to appear?

Mr. MacQuarrie: RSO 1980, chapter 101, subsection 14(2); RSO 1980, chapter 398, section 26 and subsection 33(1).

Mr. Chairman: Is there any discussion? If not, all those in favour of the motion?

Motion agreed to.

Section 96, as amended, agreed to.

Section 97 agreed to.

On section 98:

Mr. Chairman: Is there any discussion on section 98? If not, shall--

Mr. Renwick: I am really worried about section 98, because Pat Reid does not realize the historic moment in the life of the persona designata has been evolved.

Mr. T. P. Reid: It has caused me countless evenings of unrest.

Section 98 agreed to.

On section 99:

Mr. Chairman: Shall section 99 carry?

Mr. Renwick: How old is that \$3,000?

Mr. T. P. Reid: These days, not very old.

Mr. Renwick: No. What I meant is has it been there for 20 years?

Mr. Beecroft: I think it is about 10 years.

Mr. Renwick: Ten years.

Mr. Beecroft: For a while it was \$3,000 for the county judges and \$1,000 for the supreme judges. Then, around 10 years ago, the federal legislation was amended to say it could not exceed \$3,000 and it was made consistent, with \$3,000 for both levels of the court.

Mr. Renwick: Having regard for inflation, I guess we do not need to cut it in half.

Mr. Breithaupt: All judges receive that additional--

Interjection: All federally appointed judges, yes.

Mr. Breithaupt: Oh, federally appointed judges.

Mr. T. P. Reid: Can you give us some examples of what that would entail? Or is it simply an additional emolument?

Mr. Beecroft: Country court judges, for example, sit as surrogate court judges. A surrogate court judge is really a provincial office that county court judges perform that--

Mr. MacQuarrie: The \$3,000 covers that, but not paid extra as being a surrogate court judge?

Mr. Beecroft: That is right.

Section 99 agreed to.

Sections 100 and 101 agreed to.

On section 102:

Mr. Renwick: What is the change in subsection 3? I would

have assumed that has always been there. What is the actual amendment?

Mr. Beecroft: The existing bill says the inspector has the same powers as a court to summon witnesses.

Mr. Renwick: Oh, it is a question of whether he could pretend to summon a judge or even--

Mr. Beecroft: No, that is also part of existing provision. The change is really purely a housekeeping thing. That is, the Public Inquiries Act says that wherever anyone is given the powers of the court, it means he has the powers of inquiry under the Public Inquiries Act.

We thought it was just more direct to refer directly to the Public Inquiries Act, because that also incorporates protection against self-incrimination, for example. It is set out with the other protections that are contained in the Public Inquiries Act.

Mr. Renwick: Just before we leave section 102 and the destruction of documents. Why is there no reference to the provincial offences court, about getting rid of documents?

Mr. Beecroft: Clause (c).

Mr. Renwick: Oh, sorry.

Section 102, as reprinted, agreed to.

Section 103 agreed to.

3:40 p.m.

Section 104, as reprinted, agreed to.

Sections 105 to 107, inclusive, agreed to.

On section 108:

Mr. Renwick: Were there any left or is this just to remove an obsolete provision?

Mr. Beecroft: We cannot be 100 per cent sure we have done a complete search. We did a computer search of the statutes looking for the word "the" together with "judge", and looking for the words "pay to the judge," and we could not find any that way. We cannot be sure those are the only ways such a thing would be phrased, but there are certainly not very many.

Section 108, as reprinted, agreed to.

Section 109 agreed to.

Mr. Breithaupt: To save you some difficulty: it would appear the next recommendation was one by the Advocates' Society on section 121. I have nothing further before that section if you

want to look at that. If you wanted to put sections 110 to 120 inclusive, it would be all right with me.

Mr. Renwick: I would have to hesitate at section 116.

Mr. Chairman: If that is the case we can just keep going in the usual fashion.

Mr. McQuarrie moves that sections 110 to 115, inclusive, be approved.

Motion agreed to.

Sections 110 to 115, inclusive, agreed to.

On section 116:

Mr. Chairman: Mr. Renwick moves that subsection 116(8) be deleted and that the consequential amendments to subsections 2, 4 and 6 be made.

Mr. Renwick: The reason I make that motion is that I have a profound dislike for the ex parte injunction in labour relations matters, and I believe subsection 116(8) is the one which would perpetuate that ex parte application.

Mr. Gillies: Might I ask if the Attorney General could clarify his view on this particular subsection.

Hon. Mr. McMurtry: These subsections were the subject matter of a very great deal of consultation. My recollection is of a delicate balance being reached some years ago in this area. This is really a restatement of the existing law. I think to change this at this late stage would be a substantial departure from what the Legislature agreed upon about 15 years ago.

Mr. Breithaupt: Do you want to comment on the fairness of it?

Hon. Mr. McMurtry: We think it does represent a reasonable consensus and a fair balance of the various interests involved in an industrial dispute.

Mr. Renwick: There is a long history behind this whole section, of course. It is saying that in a labour dispute, you can go to the court and get an ex parte injunction against matters that should be handled by the police authority. If the police power has broken down, then this kind of injunctive process through the courts should not be available as an avenue.

You will notice in clause 116(8)(b) that "notice as required by subsection (6)"--that is the two days' notice--"could not be given because the delay necessary to do so would result in irreparable damage or injury, a breach of the peace or an interruption in essential public service."

Then you will notice in clause (c) that "reasonable

notification, by telephone or otherwise has been given to" the members of the organization and so on.

What you are basically talking about is that the police power has failed. We in the New Democratic Party and in the labour movement have been very concerned about the capacity to call in the injunctive power of the Supreme Court of Ontario to aid the police. I do not want to belabour the matter, but that is the concern I have always had about that section. I think it is outmoded and out of date and is simply used to inflame, if anything, an otherwise flammable situation.

I recognize I will not today be changing this matter, but I wanted to express the concern we have always had about this section of the Judicature Act.

Mr. Gillies: In view of the gravity of this clause, I wonder if I might not call for a recorded vote. Do I need to call for a recorded vote?

Mr. Chairman: Do you want to move the motion?

Mr. Renwick: I would, as a matter of fact. I am sorry, I thought I had moved the motion.

Motion negatived.

Section 116 agreed to.

On section 117:

Mr. Renwick: I am not familiar with all of this. Is it true it is notice of the proceeding if the certificate is simply filed against title? I have always thought that was rather strange, unless there are some of us who run down to the registry office every week.

Mr. T. P. Reid: I do not think anyone in this room does that.

Mr. Renwick: You are not likely to know whether or not it has been filed against title.

Mr. Elston: You are likely to be trying to sell or to advance mortgage money, which is really where it becomes critical.

Sections 117 agreed to.

Section 118 agreed to.

3:50 p.m.

On section 119:

Mr. Breithaupt: Mr. Chairman, why is it necessary to define that a dentist can carry out a mental examination on one of the parties if so ordered by the court? It seems rather odd that "medical practitioner" would be defined that way. I would have

thought a physical or mental condition of a party would be hardly the province of someone licensed to carry on dentistry.

Mr. T. P. Reid: It reminds me of a number of jokes, which I will not repeat at the moment.

Mr. Chairman: Could we have an explanation from the minister?

Hon. Mr. McMurtry: I do not think there are any changes from the existing law. Obviously, the need for a dental examination in a personal injury action is appropriate. The definition, I suppose, is set out in a way just to simplify it rather than set out as a separate paragraph.

Mr. J. A. Taylor: Is it a mental condition or a dental condition? Is it a dental examination or a mental examination?

Mr. T. P. Reid: Perhaps it is a misprint.

Mr. Breithaupt: I do not think so. It may be it is simply meant to be imposed particularly where facial damage has occurred and certain rebuilding would have to be observed upon by a person who really was a dental surgeon in the correct use of that phrase. It just seemed a rather odd sort of thing, but it may well be as practical a way of wording it as any other.

Section 119 agreed to.

Section 120 agreed to.

Section 121, as reprinted, agreed to.

On section 122:

Mr. Breithaupt: Mr. Chairman, it was suggested as a paragraph 122(2)13 that a clause be added as follows: "Support, maintenance or division of assets between spouses or former spouses." The Advocates' Society had suggested that. Is that now thought to be included in the relief item which is under paragraph 122(2)2? Is that the change?

Hon. Mr. McMurtry: Yes.

Mr. Renwick: Mr. Chairman, I take it that in substance we are not inadvertently making any change at all in trial by jury or without a jury in the province. Is it a fair statement that the availability of the jury trial is not being affected by these decisions? For example, has "relief against a municipality" always been without a jury?

Mr. Beecroft: The present law prohibits jury trials against municipalities in actions based on the nonrepair of a bridge or highway. This is an extension of that.

Mr. Breithaupt: Is that the only relief against a municipality which is included, or is this now going to be a somewhat more general term?

Hon. Mr. McMurtry: It seems to me to be a more general term. I have never heard of a jury action against a municipality.

Mr. Renwick: In any circumstances? Is that what you are saying?

Hon. Mr. McMurtry: Yes, I have never heard of a jury action against a municipality, but certainly it has not been generally prohibited.

Mr. Breithaupt: It seems a very broad application where it could be a matter of negligence in repair or other duties, or a flood. I do not know what it might be, but it would seem as though you are barring an entire class of actions just because a municipality is involved. It may be your wish to do that, but if it is not then you will want to consider it a little more thoroughly.

Hon. Mr. McMurtry: To my knowledge, a case has never proceeded against a municipality with a jury. Jury notices have been served and usually are struck out. I think the reason behind this was to provide a greater consistency in relation to the concept of proceedings of trials against the crown where a jury is not permitted.

Mr. Breithaupt: This is to clarify then that--

Hon. Mr. McMurtry: In other words, if there is not going to be a jury action against a government, federal or provincial, or a specific ministry thereof, then it is consistent to treat municipalities in the same manner.

Mr. Breithaupt: So rather than go through the serving of a notice, you are clarifying what has developed into a practice to make it consistent with the federal-provincial rules.

Hon. Mr. McMurtry: Yes. That is the principle behind it.

Mr. Renwick: But we do not have any act covering proceedings against a municipality, do we?

Hon. Mr. McMurtry: No.

Mr. J. A. Taylor: What was the rationale for that?

Hon. Mr. McMurtry: The original rationale, so far as I understand it, beginning with some forms of municipal, regional or county government, was that it was a prohibition against the municipality or county from serving a jury notice on the basis that the plaintiff would be prejudiced if a jury tried the action, given the fact that the jury would be made up of individual ratepayers who might have an interest in obviously not having the municipality or county pay out damages which would be coming indirectly from the pockets of the jurors. That obviously reflects on a noncomplex age where the people could see where the dollars came from more directly.

Mr. T. P. Reid: Given that, is it fair, as my friend Mr.

Breithaupt says, to exclude a whole class of people in terms of the kinds of actions they can take?

Mr. Breithaupt: I suppose you have to take it the next step and say that municipalities are not a level of government, at least under our Constitution, but are subordinate to and creatures of the province and therefore, if you cannot sue the province--the Queen in right of Ontario--and require a jury trial, presumably you should not be able to sue a component part with any broader opportunity than you could the main part.

Section 122, as reprinted, agreed to.

Sections 123 to 125, inclusive, agreed to.

4 p.m.

On section 126:

Mr. Breithaupt: The point that was raised by two organizations here dealt with the deletion of the requirement of an official guardian's report where the custody access proceedings are uncontested. Has any thought been given to that suggestion to save the costs and the time involved where that item is not at issue?

Hon. Mr. McMurtry: There have been a considerable number of discussions in relation to this. Mr. Perkins just advised me that the most recent meeting will take place today and this is something that is under very careful review.

I do not know if it has been completed or not, but we have had a fairly significant analysis of just what would be involved if these reports were not required in the undefended cases. The point that has been made on the one hand is that this is an unnecessary expense, as you point out, when nothing much is going to change. On the other hand, the people in the official guardian's office have pointed out that this requirement has worked to the interest of a certain number of children. Even though you are talking about a small minority of cases, it does warrant this notice.

I must admit I am very open-minded about it at the moment and the matter really is still under very active review.

Mr. Breithaupt: The effect of the report may help to balance up the situation from an independent point of view for the children's future. There certainly is that aspect to it that I have recognized.

Mr. MacQuarrie: Although I am not entering into a divorce action, the most important parties are the ones who really are not represented in the thing at all. I refer to the children, who are quite often in a position where an impartial investigation of their circumstances and of the plans made for their maintenance and education is quite significant. It might well be that the official guardian's report will say neither party is really competent and recommend that the children be looked after elsewhere.

To my mind, we should not really omit this sort of thing, even where the mother and father agree the children should stay with one or the other. I have seen many situations where children are the last ones thought of in this sort of thing and custody just seems to be one of the insignificant elements of the whole proceedings.

Mr. Renwick: I certainly support its continued inclusion in the bill. At another time, with more study, there might appear some other basis, but the mere fact that the parents do not particularly raise the question does not seem to me to be a reason for dispensing with the report.

Mr. Breithaupt: I think that approach makes good sense in that having the independent view of the situation may be of benefit to the court. It certainly may have some value to keep it as it is.

Section 126, as reprinted, agreed to.

On section 127:

Mr. Breithaupt: It is interesting that the Insurance Bureau of Canada suggested this should go in the Insurance Act rather than here in the Courts of Justice Act, or that the section be deleted.

Mr. Chairman: Shall section 127 carry?

Mr. Breithaupt: Perhaps we could hear as to why it is with us before we roll on so merrily, Mr. Chairman.

Hon. Mr. McMurtry: We think this is clearly a matter within court procedure and should be dealt with under the Courts of Justice Act. Of course, we are dealing with more than just insurance contracts.

Interjection: Oh, yes.

Hon. Mr. McMurtry: I understand their point of view; we just respectfully disagree with it.

Section 127 agreed to.

Sections 128 to 131, inclusive, agreed to.

Mr. MacQuarrie: Mr. Chairman, the ministry seeks to amend the bill by adding section 131a. It is a section, incidentally, that I had hoped Mr. Taylor would move.

Mr. Chairman: Mr. J. A. Taylor moves that the bill be amended by adding thereto the following section:

"131a(1) Subject to subsections 3 and 4, where a person obtains an order to enforce an obligation in a foreign currency, the order shall require payment of an amount in Canadian currency sufficient to purchase the amount of the obligation in the foreign currency at a chartered bank in Ontario at the close of business

on the first day on which the bank quotes a Canadian dollar rate for purchase of the foreign currency before the day payment of the obligation is received by the creditor.

"(2) Where more than one payment is made under an order referred to in subsection 1, the rate of conversion shall be the rate determined as provided in subsection 1 for each payment.

"(3) Subject to subsection 4, where, in a proceeding to enforce an obligation in a foreign currency, the court is satisfied that conversion of the amount of the obligation to Canadian currency as provided in subsection 1 would be inequitable to any party, the order may require payment of an amount in Canadian currency sufficient to purchase the amount of the obligation in the foreign currency at a chartered bank in Ontario on such other day as the court considers equitable in the circumstances.

"(4) Where an obligation enforceable in Ontario provides for a manner of conversion to Canadian currency of an amount in a foreign currency, the court shall give effect to the manner of conversion in the obligation.

"(5) Where a writ of seizure and sale or notice of garnishment is issued under an order to enforce an obligation in a foreign currency, the day the sheriff, bailiff or clerk of the court receives money under the writ or notice shall be deemed, for the purposes of this section and any obligation referred to in subsection 4, to be the day payment is received by the creditor."

Mr. J. A. Taylor: Mr. Chairman, I understand this follows from a submission entertained by the committee, and I believe there were subsequent meetings on the reworking of that section. Maybe the staff can confirm that.

Mr. Breithaupt: This was in the business law section of the Canadian Bar Association (Ontario).

Hon. Mr. McMurtry: Yes, and the civil litigation section of the Canadian bar?

Interjection: Yes.

Mr. Breithaupt: So they are all content with the sorting out of the details?

Hon. Mr. McMurtry: Yes.

Section 131a agreed to.

Mr. Renwick: Nice piece of drafting you did here, Mr. Taylor.

Mr. J. A. Taylor: Yes. It took them a while, but--

4:10 p.m.

Sections 132 to 135, inclusive, agreed to.

On section 136:

Mr. Chairman: Mr. J. A. Taylor moves that clause 136(4)(d) of the bill be struck out and the following substituted therefor: "(d) with the consent of all the parties or by order of the court, clauses (a) and (b) apply to any other step in the proceeding."

Mr. J. A. Taylor further moves that subclause 136(4)(g)(ii) of the bill be struck out and the following be substituted therefor: "(ii) translation of documents in the other language under clauses (a), (d) or (f), unless the court considers that the ends of justice do not require the expense of translation."

Mr. J. A. Taylor: On that, I gather the translation is a public expense.

Hon. Mr. McMurtry: Yes.

Mr. J. A. Taylor: And not assessable to any of the parties.

Hon. Mr. McMurtry: No.

Mr. J. A. Taylor: I think that was an earlier issue.

Motions agreed to.

Section 136, as amended, agreed to.

Sections 137 and 138 agreed to.

On section 139:

Mr. Breithaupt: Is the amendment to subsection 139(4), the one referred to again by the civil litigation section of the Ontario branch of the Canadian Bar Association?

Hon. Mr. McMurtry: It is a cross-section, yes.

Section 139, as reprinted, agreed to.

On section 140:

Mr. Chairman: Mr. J. A. Taylor moves that section 140 of the bill be amended by inserting after "so" in the first line: "having regard to changes in market interest rates, the circumstances of the case, the conduct of the proceeding or any other relevant consideration."

Mr. Breithaupt: There was one reference, in our notes from the Insurance Bureau of Canada, taking into account in these matters the dates upon which medical reports were available and delivered and received, so presumably decisions or judgements on consent would have been done earlier, which would save some interest, or however it might go. Is it the intention that this is a somewhat broader, general amendment which would allow those kinds of considerations to be taken care of?

Hon. Mr. McMurtry: Yes, that was the original intention of the legislation, but there is some judicial authority that would appear to place a narrower intention than had been intended when this legislation was passed. We were trying, in effect, to reinforce the original intention by including these various matters for consideration.

Mr. Breithaupt: That seems fair, so a variety of these considerations can be put before the court whether they are successful or not.

Motion agreed to.

Section 140, as amended, agreed to.

Sections 141 to 143, inclusive, agreed to.

Section 144, as reprinted, agreed to.

On section 145:

Mr. MacQuarrie: Mr. Chairman, the ministry has proposed an amendment with respect to section 145 that I would be happy to move.

Mr. Chairman: Mr. MacQuarrie moves that clause 145(2)(a) be struck out.

All those in favour of the motion?

Mr. Breithaupt: Mr. Chairman, presumably we would like to talk about it first.

Mr. Chairman: I am sorry. Mr. Renwick, is that what you were pointing out?

Mr. Renwick: I am quite happy with the amendment. I have another matter.

Mr. Breithaupt: Of course, that would then include in the amendment--you would get rid of the comment "or" and the "(b)." Do they simply go out without having to be referred to?

Mr. MacQuarrie: There will be a tidy-up clause at the end.

Mr. Breithaupt: I understood from the earlier comment that the Attorney General was opposed to any discretion to close hearings to the public. I have no particular objections to this because there still is a saving portion here which, in a particular circumstance, allows that exclusion to be sought on application to the court.

Hon. Mr. McMurtry: We have tried to narrow it down. Some concern has been expressed about the term that has been employed over a long period of time, "matters harmful to public security." There seemed to me to be a lot of concern about just what was

meant by that. Basically what we are dealing with is trying to narrow it so we are dealing with "the possibility of serious harm or injustice to any person."

It has always been my understanding that "matters harmful to public security" really did incorporate "the possibility of serious harm or injustice to any person." We think we can live with that, and it does give the appearance of maintaining the openness of the courts as a high priority.

Mr. Renwick: My concern is with the word "possibility."

Mr. Chairman: Mr. Renwick moves that the word "possibility" in subsection 145(2) be deleted and the word "probability" be substituted therefor.

4:20 p.m.

Mr. Renwick: I welcome the deletion of the first portion of that clause, particularly in a jurisdiction such as Ontario, but I have grave consideration about "the possibility of serious harm or injustice to any person" justifying a departure from the general principle.

On the general principle, I wish I could recall the exact words of Mr. Justice Martin. Part of the price we pay for an open court system is people are going to get hurt in that system. Their reputations are going to be affected, regardless of what the disposition of the case is. I think in almost every case, one could make an argument that the possibility of serious harm or injustice to any person justifies a departure from the general principle that court hearings should be open to the public.

I would think the court would be capable of making a decision about probability in such a way as to point to some additional ingredient that would lead to a departure from that general principle. All of us could call up instances where a person just simply is hurt, and the harm can be serious or the injustice may be serious. That is the price we pay.

The term "possibility" seems to me to be much too wide open to closing the courts. I would prefer, as I stated in the amendment, the word "probability." I do wish I could remember the exact words of Mr. Justice Martin about that aspect of it.

Hon. Mr. McMurtry: We are not dealing with criminal cases here and we are not dealing just with a possibility standing by itself. We are dealing with a possibility that justifies a departure from the general principle. It seems to me to be a pretty heavy onus to overcome to satisfy the court that the possibility of serious harm or injustice does justify this departure from this fundamental principle. This has been in the rules for some time.

Mr. Breithaupt: "Possibility" gives a broader protection. "Probability" is going to narrow it perhaps too far.

Hon. Mr. McMurtry: It would be almost impossible.

Mr. J. A. Taylor: It is a discretion on the part of the court. Surely we must have some confidence in the exercise of that discretion.

Mr. Stevenson: I do not know what "probability" means in legal terms, but statistically "probability" could be 0.00001. It does not have to be interpreted as a high probability. I am not really sure that in changing the words you have really narrowed the--in fact, I would say in the sense of statistics, "possibility" is maybe a narrower term than "probability."

Interjection: That sure convinced me.

Mr. Renwick: I think you are quite right.

Motion agreed to.

Section 145, as amended, agreed to.

Mr. Chairman: That brings us near the time of 4:30. Does the committee wish to continue?

Mr. MacQuarrie: I do not know. Are there any other concerns? I have gone through the statute and speaking personally--

Mr. Renwick: I would be quite happy to sit for another 15 or 20 minutes.

Mr. MacQuarrie: I would be quite happy to move that--

Mr. Renwick: I do not want to depart from what we have been doing, but I am very happy to press on.

Mr. MacQuarrie: We only have about six more clauses anyway.

Mr. Breithaupt: Do not forget the complementary amendments that begin at section 160. It would appear to me that the responsibility of ensuring that the right section is being repealed and referred to is much more that of the ministry advisors than it is, particularly or peculiarly, that of the members of the committee. We are not able to cross-reference each of these sections or statutes before us and no one should pretend that we are.

The Attorney General has the responsibility to ensure, for example, the repeal--if he wants--of the Public Officers' Fees Act as referred to in section 207. That is just fine by me. I am not a public officer and therefore will not be getting any fees. Or the Replevin Act in section 210--that is your responsibility. I am prepared to allow you to deal with those sections en bloc after section 159.

I think it is best if we can clear up this next little bit.

On section 146:

Mr. Renwick: When we had the discussion some years ago about this question in section 146, I was concerned about people being photographed outside the building as they leave the court building. This is related solely to the interior of the building. I know we had a discussion at the time this was first put in and I think the word agreed upon was that strange word "precincts."

If it is offensive to take a picture of a person entering or leaving a courtroom in the building, it seems to me to be as offensive to take a picture of a person entering or leaving the actual building in which the court is going to preside.

Mr. Breithaupt: Usually with the word "courthouse" right behind the person as he appears.

Mr. Renwick: Yes. I am just curious. I do not remember all of the debate, but I know Robert Welch was the Attorney General at the time this came up. As a result of discussion, we did add the word "precincts." It was an attempt to indicate that it was as offensive going in and coming out of the building--and again, trying to remember we are dealing with civil matters here--as going in and coming out of the courtroom.

Mr. Breithaupt: The comments made by the reporter, the media or the cutline on the photograph will be just as damning as if it were taken sitting in the courtroom itself and would be used for the same purpose, if that is an embarrassment we are trying to avoid.

Mr. Beecroft: We are having a consultation.

Mr. Renwick: I am not asking you to delay it, but there is a change from what it was.

Mr. Beecroft: There are changes in words but not in meaning, Mr. Renwick. The existing Judicature Act says no person shall take or attempt to take any photograph of any person in the precincts of the building.

Mr. Renwick: Yes.

Mr. Beecroft: "Precincts of the building" is defined to mean "the space enclosed by the walls of the building."

Mr. Renwick: Oh, good God.

Mr. Beecroft: Really, we were just cleaning up the wording.

Mr. Renwick: I did not realize the refinements killed the discussion we had at that time. I assumed that precincts meant the immediate vicinity of that building.

Mr. MacQuarrie: If a person with a camera stands on a street, whether outside a courthouse or not, and takes someone's picture on the way in or out of a building, I do not see why we should be exercising control over it. If he is in a building under the Attorney General's control, I can see we can do that quite properly.

Mr. Breithaupt: The result is the same, though, because the person whose photograph is being taken will then be subject to the headline or the newspaper article or whatever.

Mr. MacQuarrie: You could take his photograph walking down the street and run a picture of the courthouse alongside it.

Mr. Breithaupt: I know, and I guess that could happen too, but basically we are allowing to happen peripherally what we are denying in particular, and it is going to be used for the same purpose. Mind you, someone could have taken a photograph of a person leaving his home that morning on his way to the courthouse.

Mr. MacQuarrie: I can see the Courts of Justice Act applying to facilities, buildings or lands that are under the control of the Attorney General, but when you come to other property not under the control of the Attorney General, I think the person is free to do what he wants.

4:30 p.m.

Mr. Renwick: What do you mean is "under the control of the Attorney General"? The outside of the court at 361 University? The lawn?

Mr. MacQuarrie: The lawn, yes. The sidewalk, no; that is municipal.

Mr. Renwick: I recognize that problem, but you are talking about the outside of the building, so we are talking about the same matter. It seems to me that people should be able to walk in and out of a courthouse for the purpose of attending the hearing in which they are involved without being subjected to close-up harassment of some sort. I know you cannot extend it from portal to portal, from the time the guy leaves his home in the morning until he gets back at nighttime.

Mr. J. A. Taylor: We will have to watch, Mr. Chairman, that we do not fall into that NDP trap they are setting for us, to further restrict the freedoms of the people.

Mr. Renwick: I was thinking of the dignity of the process.

I am not going to labour it; you know my point. I just do not think you should be able to take photographs immediately outside 361 University Avenue, on that property, or at Osgoode Hall or at any other courthouse.

Section 146, as reprinted, agreed to.

Section 147 agreed to.

Sections 148 to 152, inclusive, as reprinted, agreed to.

On section 153:

Mr. Breithaupt: This is a new section, Mr. Chairman, and

again we had the Advocates' Society's involvement. Were the two points they raised the basis for this and have those concerns been resolved?

Mr. Beecroft: Yes. This is another provision that is a result of the discussion we had.

Mr. MacQuarrie: We had some trouble some time ago about estates of Canadian citizens with foreign beneficiaries. My memory is a little bit hazy on this, but there was some suggestion that very little, if any, of the funds were getting to the ultimate beneficiaries; the foreign governments were extracting a lot of it.

Hon. Mr. McMurtry: The Estates Administration Act.

Mr. MacQuarrie: Right. Is there a conflict between that act and this particular section in which a person is entitled to have the money paid over to the consul of the country?

Hon. Mr. McMurtry: It is not a mandatory provision, as I understand it.

Mr. MacQuarrie: It may be paid to the consul; I see.

Section 153, as reprinted, agreed to.

Sections 154 to 159, inclusive, as reprinted, agreed to.

Mr. MacQuarrie: Mr. Chairman, I suggest that part X, being sections 160 to 222, inclusive, carry as reprinted.

Mr. T. P. Reid: I would like to hear from Mr. Renwick. I am sure he has some concerns.

Interjection: Where are you now?

Mr. MacQuarrie: Sections 160 to 222.

Mr. T. P. Reid: Almost the rest of the bill.

Mr. J. A. Taylor: Section 222; that is okay. That makes good sense. It is section 223 I was concerned about.

Interjections.

Mr. Renwick: When are you going to bring it into force? Will it be this year or next year?

Hon. Mr. McMurtry: As you know, it will be brought into force at the same time as the rules of practice are ready. We had hoped for July 1 but, looking at it realistically, it does not seem to be practical given the time lag that is going to be required to educate the profession.

Sections 160 to 222, inclusive, as reprinted, agreed to.

Mr. MacQuarrie: I take it the legislative counsel will be preparing the bill for its final printing. In the course of

editing I assume the appropriate changes in numbers and letters will be made. I wonder if the short title of the act might more properly be the Courts of Justice Act, 1984.

Interjection.

Mr. MacQuarrie: The legislative counsel just whispered to me.

Hon. Mr. McMurtry: I am sure this is a very special moment for legislative counsel, my senior advisers and others because we have reached another historic landmark. There has been a very lengthy history in the development of this legislation, Mr. Chairman, and I thank you and the committee.

Bill, as amended, ordered to be reported.

The committee adjourned at 4:38 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

ARCHITECTS ACT

TUESDAY, MARCH 6, 1984

Morning sitting

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Grande, T. (Oakwood NDP)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitutions:

Hodgson, W. (York North PC) for Mr. Eves
Williams, J. R. (Oriole PC) for Mr. Gillies

Also taking part:

McMurtry, Hon. R. R., Attorney General (Eglinton PC)

Clerk: Arnott, D.

From the Ministry of the Attorney General:

Fram, S. V., Counsel, Policy Development Division

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, March 6, 1984

The committee met at 10:16 a.m. in committee room 1.

ARCHITECTS ACT
(continued)

Resuming the adjourned consideration of Bill 122, An Act to revise the Architects Act.

Mr. Chairman: Good morning, ladies and gentlemen.

Unfortunately, the Attorney General (Mr. McMurtry) is not with us at the present time. I understand he is in the building. He is either at cabinet or meeting with his fellow Attorneys General before they proceed to the first ministers' conference, which starts tomorrow, in Ottawa. He has assured me he will be available.

In the meantime, we have here the parliamentary assistant, the member for Carleton East (Mr. MacQuarrie), with Mr. Fram.

Mr. Williams moves that the committee use the reprinted copy of Bill 122, which shows all the proposed amendments by the Attorney General.

Motion agreed to.

Mr. Renwick: Perhaps, before we start, Mr. MacQuarrie or Mr. Fram might bring us up to date as to what has happened since we last heard the representations on this matter. Obviously there have been a number of developments. An explanation of them now might very well save us some time.

Mr. Fram: Immediately after the committee finished its public hearings and gave us a direction to seek a solution to the interior design problem, we set out to do so. The Interior Designers of Ontario created a steering committee composed of the various elements: store planners, institutional designers, interior designers, commercial designers. That steering committee and the IDO retained the firm of Goodman and Goodman and Kathy Robinson of that firm.

I met with them, and subsequently they had many discussions with John Brunner of the Ontario Association of Architects and kept me up to date. Ultimately they achieved an agreement. That agreement is embodied in this reprinted bill in a new clause 11(3)(e). In substance, that is the agreement between the architects and the interior designers.

In addition, prior to that we re-examined the architects and the engineers. I took another look at the beginning of the wording of rule 3, which started out, "An architect and a professional

engineer together..." That sounded as though on every alteration both an architect and an engineer had to be involved in assembling institutional buildings, even though the work was purely engineering.

That was an impression given from the wording; quite a proper impression, given the way it was worded. That has been reworded to more accurately describe what is involved. If the work is purely engineering in an alteration, then a professional engineer without an architect may do it. Similarly, if the work is architectural and no professional engineering is involved, an architect may do it. Consequently, an interior designer who really only needs a structural service need only retain a professional engineer, if that is all that is involved in the alteration.

That now appears to be much clearer. It certainly appears clear; before it was totally ambiguous.

That really brings us up to date on those.

In the brief to the committee from the IDO, I noticed it found the bill acceptable with those changes. They have also indicated they will be seeking a private bill for the Interior Designers of Ontario.

Mr. Chairman: Thank you, Mr. Fram.

Mr. Renwick: Mr. Chairman, I have been asked to move a couple of minor amendments when we get to section 11 and agreed to accommodate Mr. Kapsa in moving them, at least for discussion purposes. I believe he has had some subsequent discussions with Mr. Fram. I just wanted to let you know that I had been requested to do that.

Mr. Chairman: On section 11, fine.

Mr. Breithaupt: Mr. Chairman, perhaps we could just follow through on the comments Mr. Fram has made. In the last several days, we have received probably 25 additional letters and comments, mainly from industrial designers. Are we assured at this point that the variety of the points raised by the individuals have all been included in and referred to by the overview brief submitted on behalf of the Interior Designers of Ontario? Are we going to spend some time reviewing the group of exhibits just received to ensure the comments made have been considered?

Mr. Chairman: The researchers have done what they could with the ones they had. These are in the brief they gave us. The recent ones we have been getting--

Mr. Breithaupt: There are three or four or five more.

Mr. Chairman: Right, but we have been making the researchers aware of them and have been asking Mr. Fram to look them over and possibly make some comments on them a little later. I have another that just came in this morning. They are still coming in on Bill 123.

Mr. Breithaupt: It would seem useful to have some response given to these 25 or so people. Is it possible to have the clerk at least acknowledge the receipt of their submissions and then inform them the matter has been considered under the overall brief presented on behalf of the interior designers?

Mr. Chairman: Yes. I have no problem with that. I think that could be accommodated.

Mr. MacQuarrie: I think that would be the best approach to take. Most of the submissions we have been receiving over the past few days have been from designers who obviously are unaware of the changes that have been made in the legislation. Some of the submissions stem from a meeting held at Ryerson Polytechnical Institute which apparently was very well attended and which aroused quite a bit of interest among the designers.

The objections raised in most of the letters have been dealt with by the amendments. I can see no reason why the clerk of the committee or Mr. Fram could not simply acknowledge the letters and indicate the matter has been looked after.

Mr. Breithaupt: It would be a courtesy if we could do that. The persons who have written obviously feel very strongly about their future livelihood and yet may be unaware of the overall brief and the accommodations that have been attended to.

Mr. Williams: Mr. Chairman, I know the committee has finished hearing representations from the public at large and we are here to deal with the bill on a clause-by-clause basis. However, I wonder whether anyone is present today as an observer who might be a representative of these several groups and who could indicate that there is concurrence in the amendment and with some of the related individual letters that have come in and who could speak on their behalf as well to indicate whether we are meeting all the objections and concerns. I just do not know whether that answer could be forthcoming from someone who has the authority to so state here today who is representing those groups.

Mr. Breithaupt: The problem there, of course, might be that the person has not seen the various briefs and may not know of additional points that could have been raised unless there was some time to study them.

Mr. Williams: Well, let us find out.

Mr. Mitchell: Mr. Chairman, I have just been going through some of the briefs handed to us lately, and I will draw your attention to the brief handed to us this morning from the Exhibit and Display Association of Canada. Their concerns dealt with two areas, 11(4)3 and 11(3)(e). Their wording is, to the best of my comparison, exactly identical to what they have been asking for. That is from one organization this morning.

Another brief we received this morning, from Glelen Design Lines, referred to four subsections under section 11. They went through 11(3)(a), (b) and (e) on pages 14 and 15. Well, 11(3)(e) has been dealt with as per Mr. Fram's comments. They also went into 11(4)1i and iii, 11(4)3 and 11(5).

Some of their concerns have been answered. If Mr. Fram should have their letter, he might be able to point out any other changes that were made in the sections they refer to. That is from Glelen Design Lines, and it was handed to us this morning.

Mr. Renwick: Mr. Chairman, because of the degree of concern around and out of courtesy to those who have taken the trouble to attend, may I suggest that, without reopening all the issues, as we go through the bill clause by clause any person in attendance today who feels the matter does not deal with his concern perhaps could be allowed to make whatever his comment is to make certain we have not overlooked anything. That seems to me to be a simple way to deal with Mr. Williams's concern.

Mr. Williams: Could we have the clerk determine for the members present if they are representatives for those particular groups?

Mr. Chairman: As soon as he gets off the phone, Mr. Williams.

Mr. MacQuarrie: Mr. Chairman, I thought we had come to the conclusion when we finished our hearings that while we were dealing with clause by clause, interested people could attend and would be welcome to attend, but that in order to deal as expeditiously as possible with the acts in the limited time we have available, we were not going to call on those present unless we got into an area where we felt there was some need of specialized advice or assistance. Are we now departing from what we agreed on?

Mr. Chairman: I hope we are not. I want to draw to Mr. Renwick's attention that, of course, there are always two or three different sides to the issue. If we get one side from the architects and then want the engineers and someone else, we may get bogged down. I thought we had agreed it would be at the discretion of the chair.

10:30 a.m.

Mr. Renwick: The discretion of the chair is fine with me. The reason I make the distinction is that, since we as a committee have met, there obviously has been a very large meeting attended by representatives of the ministry and others, and we have had the statement from Mr. Fram on behalf of the ministry. He believes an agreement has been reached, that one of the bodies representing a number of people in this area are in agreement with it and so on.

Because of the obvious pressure by calls and otherwise on the individual members of the assembly, let alone members of the committee, I think we would like to have some sense that what we are doing is in accordance with the agreement and that problems are resolved.

I am not suggesting we would necessarily come up with a different solution, but the record should show whether the agreement reached reflects the concerns expressed by the differing

interests. I am quite happy to leave it to the discretion of the chair to recognize as a courtesy anyone in attendance who wishes to attract the attention of the chair.

Mr. Chairman: When you say "anyone in attendance," are you suggesting people who have not appeared before the committee prior to today?

Mr. Renwick: I leave that entirely to the the chairman's discretion.

For the record, I want to state that it is not necessarily the practice of this committee not to allow participation in clause-by-clause discussion. We are doing it in this instance because of the number of representations that have been made, the work that has been done and the burden of work on this committee. I do not want you to think we have established some rule for all time on the question.

Mr. Mitchell: The member for Riverdale has put it into your ball-park, Mr. Chairman; it is at your discretion. Having said that, we will take it as it is presented. We should proceed.

Mr. Chairman: Agreed.

Mr. Williams: I do not want to prolong it, but I want to know whether those concerned parties have representative observers here today so that we know whether they are available if necessary. We should not proceed on the assumption that they are here.

Mr. Renwick: They are here.

Mr. Williams: I did not have the benefit of sitting in on those hearings. I do not recognize people in the audience. As far as you know, they are here at this point?

Mr. Breithaupt: Yes.

On section 1:

Mr. Mitchell: I do not believe section 1 was any concern of the Interior Designers of Ontario. I suspect section 1 is quite capable of being carried.

Section 1 agreed to.

On section 2:

Mr. Breithaupt: The brief from the Interior Designers of Ontario referred to creating somebody to regulate the activities of all the individuals involved with a variety of representations from the groups. Is there any intention to follow through on that idea so that a broader type of umbrella organization will include those beyond the architects' group itself?

Mr. Fram: What the Interior Designers of Ontario are seeking is a private act so that they have self-government and

control of their own members rather than an umbrella organization to be composed of architects and planners. That may evolve in time as the interests of various groups coalesce.

In Alberta, the interior designers fall under the architects, and I know that is strongly opposed by the Interior Designers of Ontario and the Ryerson faculty. They wish the freedom to develop their own profession and not be under the control of the Ontario Association of Architects.

The statement at the end of the IDO brief is simply a statement of their intention to proceed with a private bill, of which they have spoken to me several times over the past three years. I have encouraged them and sent them standardized drafts and they are going to proceed. It was that intention they were stating.

Mr. Renwick: Perhaps I could ask the Attorney General, given the circumstances that have developed and the knowledge we have obtained about the nature and extent of the design business in Ontario and the need to provide some overall self-disciplining, self-regulating body for them, whether the government is giving consideration to working with the designers with a view to introducing a government bill to establish this body, because I think it is within the tradition that if one is to grant self-government to any body it has to be done by virtue of a public bill.

This particular learning experience, if I can call it that, that we have had about the role of the designers would lead me to believe that what is forecast later on in the bill with reference to classes of people who may well be exempted from it requires in the interest of the public that perhaps the government should seriously consider, rather than a private bill, a public bill which could be introduced for this purpose.

Hon. Mr. McMurtry: There is no precedent of which I am aware that would lead me to recommend to my cabinet colleagues the introduction of a public government bill as opposed to private legislation.

I think it has been the practice in matters such as this, when people want to obtain some recognition in so far as a professional association is concerned, to go the private member's route unless it is the intention of the government to provide some monopoly such as we have seen over the years with respect to our own profession, Mr. Renwick, and other professions that we are dealing with here today.

While one can be very supportive of the overall professional intentions of the design industry, which is obviously an extremely important industry in this country, one has to recognize, for example, the concerns expressed by the Professional Organizations Committee and other studies over the years in relation to giving people exclusive areas of operation in the sense of excluding others, often inadvertently, because the concepts we are dealing with, while very important, are also very broad in nature.

An example of the difficulties inherent in this area, even when one goes the private member's route, has to deal with the landscape architects. I am not sure which standing committee dealt with that.

Mr. Williams: Regulations.

10:40 a.m.

Hon. Mr. McMurtry: Although I was not there, I believe that what started out as a very laudable project to give some professional recognition to a talented group of people ran into a number of problems when it became apparent that there were many people who believed the businesses they had been operating over the years, legitimately and in good faith, would be changed or at least the names of the businesses would have to be changed because of the desire of this group to have an exclusive use of a particular name or designation.

While I think we would be very sympathetic to working with design organizations to see if we can help them through the private member's legislation route, I sound that note of caution in relation to the introduction of a government bill.

Mr. Fram might like to add something to what I have already said.

Mr. Fram: One of the most contentious issues is the divisions within the interior design group. That is why a steering committee was used of store planners, the Ryerson group and the Interior Designers of Ontario, because the IDO itself is opposed by several other design organizations that do not wish to take its lead.

Several years ago, when the IDO was preparing a private bill and there were some statements by the then president of the IDO about closing the right of entry to interior design, a storm of lobbying took place out of fear of that issue. It is a complex issue even within the interior design business.

Mr. Renwick: I appreciate that question, but the very fact that there now is a steering committee working in an attempt to resolve the divisions within the profession or the industry, however you want to call it, would lead me to believe in the brief experience and immersion course I have had in interior designing recently that you may well feel it is not a question of granting a monopoly. The monopoly is only granted in relation to the public interest which must be served.

I have been impressed by the need for consideration to be given to the earmarks of a professional body such as mandatory membership in the public interest and the need to establish the standards of admission, both for those currently practising in the field and for those who are going to enter it, in relation to an open but standardized qualification requirement through the development of a curriculum that would meet the needs of the public interest and the concomitant requirements with respect to some form of internal discipline of their membership.

As I think your study has shown and will continue to show, this mushrooming industry is now a very integral part of the economic life of the province, and the standards that are set and the methods of qualification and the diverse interests that are involved may well provide an opportunity rather than a deterrent for recognition by the government that, whatever the history may have been in the past or whatever the problems may have been, assuming the industry can get its own act together, the time may well have come in the development of your thinking about it that you at least should not rule out the question that a government bill may well be the wisest and sanest way to approach this question.

Mr. Williams: Mr. Renwick puts forward an interesting concept, but I think a clear distinction can and must be made between government-initiated legislation that represents an enactment or embodiment of some very basic professional groups such as the Attorney General has identified. The legal profession and the very bills we are dealing with here over the next couple of days are examples.

However, as we have come to find in recent times, within these very basic professional groups--whether it be these as identified, the medical profession or people in the medical field--there are very specialized groups emerging.

Again, the Attorney General identified the landscape architects. It was they who had decided they had matured to a point where they thought they were entitled to special statutory recognition based on the historical evolvement of their particular specialty. As it happened, they got into a bit of trouble because they found that they could not quite corner the marketplace, so to speak, without prejudicing certain other people in their industry or allied fields.

It seems to me the government would be hard pressed to hold out any particular brief for any specialty group within any of these professions or organizations and be presumptuous enough to say, "We as a government think a certain select or specialized group within the medical profession or within the architectural field or whatever should now be self-identified and given special status with legislation."

I think the initiative surely has to rest with that particular group to make that determination and take their initiative to approach the government by way of the private bill route. Let them satisfy the government through that process that they deserve entitlement to that type of recognition.

In addition to the landscape architects, in recent times we have done the certified general accountants. As an example, we have the Public Accountancy Act. As you know, the certified general accountants felt for many years that they were a specialty within a profession to the point where, after a good number of years and research, they felt the time had arrived for them to obtain self-identity and self-regulation. It was accomplished after very careful consideration and an assessment of the whole situation.

I suggest to you, Mr. Renwick, that this is no different a situation. I think the initiative surely must rest with these specialty groups to make those self-determinations and obviously after consultation with the appropriate ministry and so forth. We are there to accommodate and facilitate them if they feel the time is right and they can justify it. But it would be wrong for this government to be making that determination and taking the initiatives. It should remain vested in those particular groups.

I would have to share the view taken by the Attorney General. While this group is as important as a lot of the other specialty groups that are emerging now, the initiative rests with them and should remain with them. I feel that is the proper approach that we should continue to take and it would be a dangerous precedent to start dealing in a selective way with the more specialized groups within the general professions.

10:50 a.m.

Mr. MacQuarrie: Mr. Chairman, in considering what could and should be done for this group and for the technicians and technologists, it was felt--at least in my discussions with the ministry--that the best route to go was by way of the private bill, the ministry at the same time indicating it would give support, advice and assistance in getting the bills prepared and ready for presentation to the House.

I do not see really why we are hung up on whether it should be a private bill, a government bill or whatever as long as these people are able to bring forward a piece of legislation giving these people status and as long as the bill is dealt with by the House with some degree of consideration.

I think all parties present at these hearings do have sympathy for the groups involved. I can see little trouble arising as long as the groups are able to work out their problems within themselves.

In connection with the technicians and technologists, one of the fundamentals has to be that they work out an acceptable arrangement with the Association of Professional Engineers of Ontario. As one member of this committee and of the Legislature, I am putting the professional engineers on notice that I want them to be fully co-operative when they come to deal with the Ontario Association of Certified Engineering Technicians and Technologists.

It is only in the spirit of co-operation that we can get these various related groups working and functioning each within its own sphere of operations and acquiring certain statutory recognition as well as a practical recognition in the marketplace.

In the amendments that have been put forward to both these bills, we have indicated we are going the first mile to accommodate these people. An awful lot of the rest of it is going to be up to the two groups themselves.

As I said at the outset, I do not see why we should be hung up now on whether it should be a government bill, a private bill

or whatever. We should get on with the work we have in front of us. We have an awful lot to go through in such a short time.

Section 2, as reprinted, agreed to.

On section 3:

Mr. Renwick: In view of the Attorney General's knowledge of these matters, could I just ask him whether it is still a valid requirement that no "person shall be elected or appointed to the council unless he is a Canadian citizen resident in Ontario"?

Hon. Mr. McMurtry: The question is still pending in the Supreme Court of Canada.

Mr. Fram: The issue pending is whether someone can be a member. There are no membership restrictions. Any Canadian citizen or permanent resident of Canada can become a member. The council requirement--and that is not under attack in the courts--is that any member of the council be a Canadian resident in Ontario.

The "resident in Ontario" provision is because it would be impossible to run an Ontario organization with councillors all over Canada. The "Canadian citizen" as a member of council was a recommendation of the Professional Organizations Committee, but not the membership.

Mr. Renwick: I recognize the distinction you make with respect to the actual question before the courts. I have no problem with the reasonableness of the requirement of residence in Ontario. I have some concern that what you are saying to me is that you can be a member, presumably a fully-fledged member in good standing, of this organization but be ineligible for election to the governing body. It is a point I just wanted to make. It may well be that at some point it will be an issue.

Mr. Williams: I will keep my questions to a minimum but there are some I would ask which I would already have the answers to if I had been here while the committee was dealing with the public representations. The odd question may come to mind, if I could have the indulgence of the committee.

For instance, on the addition of subsection 3(14), was it simply a mechanical problem that caused that?

Mr. Fram: The reason is that it is desirable to have the total existing council of the association continue in office. One of the members of the existing council is the immediate past president, who was not elected. Without an amendment, he would not form part of the council. It is a technical change.

Mr. Chairman: Is there anything further on section 3? If not, shall section 3, as reprinted, carry?

Section 3, as reprinted, agreed to.

Sections 4 to 6, inclusive, agreed to.

On section 7:

Mr. Breithaupt: I note in the summary of comments there were three representations made with respect to regulations being available for some concurrent review. Can we have reported to us the state at which those regulations are, and whether it is the intention of the ministry to have those circulated, commented upon and possibly improved upon by the variety of groups interested?

Hon. Mr. McMurtry: So far as the initial regulations are concerned, fundamentally they will be to implement the very important agreement that has been entered into by the two professional groups, architects and engineers. We will want to proceed fairly quickly with those, but they are not likely to be distributed in advance because of the inherent delay that would probably result. We trust the regulations will not be of a contentious nature.

11 a.m.

Mr. Breithaupt: In order to speed things up, perhaps we could expect that you will create regulations but there will then be the opportunity, of course, for suggestions to be made and the possibility of changing certain contents in those?

Hon. Mr. McMurtry: Oh, yes. There will always be that opportunity.

Mr. Renwick: I always have a concern such as that. I do think the precedent that was established with the Securities Act, where there was a widespread distribution of the draft regulations, was a very helpful part of the process. Maybe some day we will get to the stage where we can regularize that process. I wish this were one of those cases, but the member for Kitchener (Mr. Breithaupt) has put the case, and the Attorney General has obviously said no to it.

I take it that paragraph 7(1)33 is one of the amendments that foresees the likelihood of exemptions from the application of this act when performed by certain prescribed classes of persons and so on. I take it this is the wording that is part and parcel of the agreement that was reached on that occasion. Perhaps I could have an explanation of what the intent of this is if it is not what I have stated.

Mr. Fram: The intent of the provision is indeed as the member for Riverdale (Mr. Renwick) has suggested. It was not part of the agreement, however. The idea behind it is to prepare the next stage for the kind of idea the member for Riverdale was speaking of earlier. That is, when the interior designers do have their private act and if they do establish safety standards that are acceptable to the building code persons, those persons with those standards in a self-governing body will be able to discuss these matters with the architects, and regulation can be passed that will exempt them from part of the practice of architecture. Therefore, those people with their qualifications will be no safety risk to the public, and they will be able to do more than the exemption now contained for interior designers does by itself.

Similarly, a regulation could be passed for the Ryerson architectural technologists extending the area for persons with those qualifications, if they were in a self-governing body, as part of the practice of architecture, to make it greater than for anybody who is not an architect.

The idea is the same, but it did not come out of that agreement.

Mr. Chairman: Is there anything further on section 7?

Section 7, as reprinted, agreed to.

Mr. Renwick: Is there some amendment that should be moved on paragraph 26, which is out of this section?

Mr. Chairman: As reprinted. There were two government amendments on this, I think.

Mr. MacQuarrie: That was deleted.

Mr. Renwick: I was just thinking of our experience yesterday.

Mr. MacQuarrie: That paragraph has been deleted. The renumbering will probably be picked up.

Section 8, as reprinted, agreed to.

Sections 9 and 10 agreed to.

On section 11:

Mr. Breithaupt: On section 11 we have some five or six pages of recommendations, most of them dealing with the interior design group. The 20 or so additional submissions we have had would mainly refer to this section as well.

Perhaps at this point we could ask Mr. Fram to review the results of his meetings and give us an overview as to how these concerns were sorted out so it will appear here in the record as we deal with this section, and we will know the parties involved are content or otherwise if there should be any comments from those who are with us this morning.

Mr. Mitchell: Having given Mr. Fram a copy of the brief that dealt with four basic areas in section 11, that appears to be the position of the Interior Designers of Ontario as stated by this person in that firm. Perhaps he might be able to use that as a guide for us as we go through this.

Mr. Stevenson: One other point: I think it might be helpful if, as you go through your presentation, you follow through section 11, possibly subsection by subsection, and make your comments in the order of that section.

I notice one of the letters and a small brief that came in

this morning from Soo Mill and Lumber Co. Ltd. relates to the 600 square metre paragraph in subsection 3. You might make comments as you go through the thing in order, if you could.

Mr. Chairman: Will you try, Mr. Fram?

Mr. Breithaupt: This may be the last time you will have to do it.

Mr. Fram: I will try. Subsection 11(1) deals with who may practice architecture. Subsection 2 adds a further qualification to subsection 1. Even an architect, even someone who is licensed, may not hold himself out as practising except in accordance with a certificate of practice or a temporary licence. This, in turn, plugs into the insurance requirements, the mandatory or compulsory insurance an architect must have to offer architectural services to the public.

The change in subsection 2 was made because the previous subsection set out in the bill was wrong.

Subsection 3 is the key area of exemptions. The first of the changes dealt with in clause 11(3)(a) is the building that anyone may create. It reflects to a large degree the contents of part IX of the building code with which you have been provided.

The 600 square metre limit contained in that is still of some minor contention. It has been agreed to by all the major associations but there is not total happiness over the 600 square metres in gross area contained in that. However, all the accommodations with the major organizations representing all the associations have been made to arrive at this figure. There are always going to be some people who are dissatisfied with the number.

11:10 a.m.

The change in subclause 11(3)(ii) was to make it clear, first, that a common form of duplex where you have a mercantile or personal services occupancy--that is, a business with a residence on top, a very common form throughout Ontario, and especially in small towns--could be done by someone who is not an architect. "Residential occupancy" got left out and it was not clear before we made this change that it could be a combination of these occupancies which could be in this building.

The renovators council brought to our attention the "one or more of" and the Urban Development Institute of Ontario brought to our attention that "residential occupancy" had been omitted by accident and, indeed, that was by accident.

In connection with clause 11(3)(b), this arose out of intense discussions between the Urban Development Institute and the Ontario Association of Architects. The area is not very contentious, although there is some question in the industry about what "constructed directly on grade" means. However, those are dealt with in the building code and I cannot add anything more to that. There is no serious contention about that.

Clauses 11(3)(c) and 11(3)(d) are noncontentious.

Clause 11(3)(e) was the area of major concern, that is, where it used to say "a decorator may do." It also had some vague words which raised a lot of concern in the interior design industry. It said where the strength or safety of the building, or the safety of persons were concerned, they could not do finishings, decorations, and space. This provision now in clause (e) was the result of those intensive, prolonged and painful discussions between the building code officials, the Ontario Association of Architects and the steering committee of the Industrial Designers of Ontario, representing all segments of the interior design business. Here, I would bring to your attention that the intention has not changed behind the provision. It is very difficult to express what it is they could not do.

This was the cause for concern, because the use of generic terms, such as "safety of persons," raises terrible fears. If you put a counter in a shop, that could impede somebody from getting to a fire exit and, therefore, could be a matter of safety. If you were doing an office on a floor of a building and subdivided the space in any way, there would be some question of whether that could be done, even though that is the business of interior design in office buildings. It was no one's intention it would mean that, but the fear was the generic words could be interpreted in that way.

What evolved was an attempt to specify as best we could what things they are permitted to do and what things are excluded. Here we talk about interior design in the amendment, "the a preparation of provision of a design for interior space." Then we go on to extend what interior space means by saying, "including finishes, fixed or loose furnishings, equipment, fixtures and partitioning of space, and related exterior elements such as signs, finishes and glazed openings used for display purposes"--To you and me that is a window, but we did not use that language. Apparently, "glazed openings" appeals to both interior designers and to architects--"that does not affect or is not likely to affect,"--and we have a more narrowly defined exception--"the structural integrity, a fire safety system or fire separation," which are all defined ideas.

Then we have "a main entrance or public corridor on a floor." For example, if you take an office building and you are doing a floor, you can do everything except the main entrance to the floor or the public corridor, which is a safety zone under the fire code and building code. It has to have a particular structure to protect people for a longer period of time while they can escape from the building.

Next is "an exit to a public thoroughfare or to the exterior." It took a lot of pain to come up with that, because every draft that went back and forth seemed to create new problems. I am pleased I finally had a small contribution to make to this subclause in solving the semantic differences, which is not something I am specialized in.

The next exceptions are "the construction or location of an exterior wall, or the usable floor space through the addition of a mezzanine, infill or other similar element, of the building." Under this provision, it is quite clear that interior designers may do what they do; that is, they can do store planning, institutional interior planning, exhibit work; they can do everything they are doing. There is no prohibition. We have here something that should be totally satisfying to most people in the interior design business.

Of course, among the interior designers, you have people who are really quite specialized and are quite trained. Some of them are trained as architects. Although they are not architects, they have gone through the extensive training program and are capable of doing all of these things, as well. They are not satisfied and they will not be satisfied. But, at present, there is no way of isolating those people from those who have not taken that kind of training.

This is why we put in clause 11(3)(g), which is an invitation. If clause (e) is too restricting to the evolving practice of interior design--for example, the private act they will bring forward will make provisions for standards and educational materials--then they can create a class of persons under that private act and by regulation under this act. Those persons, while doing more than is permitted under clause (e), still will be able to continue to practise and not be in conflict with the Architects Act.

11:20 a.m.

That will require great negotiations with building code officials, architects, interior designers, the people at Ryerson Polytechnical Institute, and so forth, but that is an opening so the interior design business is not necessarily constricted to the ambit of what is provided in clause (e). But clause (e) is totally satisfactory to the IDO for the present.

Mr. Breithaupt: Mr. Chairman, this might be the appropriate place to stop for a moment, since the following parts deal with relationships between architects and engineers. Perhaps we can take a moment to at least canvass those who are before us. As I do not see anything but contented smiles, I assume the concerns of the design group and at least most of the persons who made submissions to us have been accommodated.

Mr. Chairman: I imagine that is a fair assumption.

Mr. Breithaupt: It seems to be the case, and if that is so I think we are pleased it has been worked out. We can now proceed with the relationship between the architects and the engineers.

Mr. Fram: The only change in the rules set out in subsection 4 was an important one, not because it changes the intention of the bill but because it was so badly expressed in the original bill. It is only with hindsight you can see how badly expressed it was, but now I am content it was a real boo boo.

The member for Riverdale took me severely to task over the original wording of paragraph 11(4)(3), which read, "An architect and a professional engineer together, shall prepare or provide the design for the construction, enlargement or alteration of a building." This sounded, in terms of these buildings, as though an architect and an engineer had to be the Bobbsey twins on any little alteration of a building.

In truth, this provision grew out of their agreement, at which point they were not thinking about alterations at all. They were thinking about constructing a building from the beginning, or an addition to a building, and, therefore, they wanted to indicate that in those kinds of buildings--when you are constructing it--you always will require architectural and engineering input. However, when that got changed into the bill, we added "alteration," and the meaning got twisted in the process.

In any substantial assembly or institutional occupancy, you will not have an architect and an engineer; you will have an architect and several engineers. There will be a structural engineer, a mechanical engineer and an electrical engineer, and there may be several other engineers who do designs in connection with that building.

While the original provision was intended to say there is an architectural component to those buildings as well as an engineering component, and both must be respected, it was an inadequate statement.

The new wording accords with the intent that the engineers will do the engineering, there is architecture and that will be done by an architect, when you are talking about a building. But when we were here, the questions in committee turned on alterations; and quite often alterations are simply engineering alterations to an existing building. I think the provision now is clear that if you have an engineering alteration to a building, a professional engineer can do the designs for that alteration and that just accords with current practice.

The way it was worded before, it raised a substantial problem for interior designers, especially if they viewed it with fear that there was a conspiracy to destroy their profession. Since they do not have status but are important and vital to industry today--and their status will be assisted by a private bill--their suspicions in that they nowhere appeared in the professional organizations' committee report, nor in this bill except as "decorators,"--they, a very important and common aspect of building today, simply are ignored as nonpersons in these bills--combined with the wording of subsection 3, gave credence to the fear they were going to be destroyed. This was in no one's mind at any time, but when you look at it from that perspective, the bill did read like a conspiracy. I think that is corrected by the change to paragraph 3.

Paragraphs 11(4)(4), (5), (6) and (7) are purely technical amendments to add or provide to performance, because that reflects the bill. In paragraph 9, we have an amendment in which we

intended to make sure the provisions which apply between an architect and an engineer also apply between an architect and an engineering corporation. Again, that is to avoid a technical problem of the Joint Practice Board.

I believe Mr. Renwick will have an amendment to move on clause 5(a), if I am correct.

Mr. Renwick: It is in the act.

Mr. Fram: Clause (b) is simply to make it clear, since there are a number of elements that form part of the practice of architecture, that if the actual design need not be done by an architect, the general review need not be done by an architect. That is just a point of clarification. I think the amendment the member for Riverdale may move will be another one in this subsection.

Subclause 6(h) is a change to deal with the residential construction industry and how buildings are measured where there is penetration of the firewalls in a residence. It is a technical amendment.

That really brings us to the end of the amendments the ministry would like to see made. I think they will satisfy the great preponderance of interior designers, certainly the Interior Designers of Ontario members, the Ryerson group and the store planners I have spoken to subsequent to this agreement being reached.

11:30 a.m.

I, too, have puzzled over the mass of letters I have received subsequent to that agreement being achieved. I have talked to all of the people who appeared here since that time to find out if they were satisfied. They have asked me questions and I have explained how I believe the revisions now work, and they appeared satisfied. But there are many interior designers--and I do not know whether they know about the agreement or not--who are simply supportive of the idea and they are not Interior Designers of Ontario members. I do not understand some of them and I cannot get an understanding of their concerns from the briefs. They seem to have the same concerns and they seem to have been met, but I cannot promise they have. They should have been met.

Mr. Chairman: Thank you, Mr. Fram. Are there any further questions to Mr. Fram on section 11? Mr. Renwick, you had proposed something?

Mr. Renwick: Mr. Kapsa--his letterhead says he is a consulting architectural designer--wrote to me, asking if I would be good enough to move an amendment.

Mr. Breithaupt: Do we have his brief, so we could follow along. Is it a brief?

Mr. Chairman: I believe Mr. Kapsa did appear during the hearings.

Mr. Renwick: This is all I have. This was a letter to me, of March 1st. I probably should have had copies made for everybody.

Mr. Chairman: It is exhibit 21.

Mr. Renwick: Without reading the whole of this letter, Mr. Kapsa simply asked that I move an amendment to clause 11(5)(a), to insert after the word "reporting" in the fourth line, the words "required to be done," which would be consistent with the amendment which has already been underlined in clause 11(5)(b).

In his note to me, he states he had reviewed the proposed motions sent out by Mr. Fram, and called him with respect to these two items. Mr. Fram indicated the ministry would have no objection to the two changes but, at this time, it would require a motion from a member of the committee. The first one is this conforming amendment to clause 11(5)(a).

Mr. Chairman: Mr. Renwick moves that the words "required to be done" be inserted after the word "reporting" in the fourth line of clause 11(5)(a).

Mr. Breithaupt: It does not seem to read quite as clearly as you want.

Mr. Mitchell: I understand "to take the place of evaluating, advising or reporting required to be done by an architect" is being proposed.

Mr. Renwick: Are you looking at the top of page 20?

Mr. Breithaupt: Yes.

Mr. Renwick: I think it is simply to make clause 11(5)(a) conform with clause 11(5)(b) by adding the same words, in this case, after the word "reporting" rather than after the word "review."

Mr. Breithaupt: "Evaluating, advising or reporting required to be done"?

Mr. Chairman: No, it is in the bottom line.

Mr. Mitchell: It reads, "is not intended to take the place of...reporting required to be done."

Mr. Chairman: "Advising or reporting required to be done by an architect."

Mr. Mitchell: You have to refer to "take the place of."

Mr. Breithaupt: I am sorry, I have just lost this.

Mr. Chairman: Could the member for Riverdale read clause 11(5)(a) as it would be?

Mr. Breithaupt: I just do not get the sense of it, I am sorry.

Mr. Renwick: Starting at the beginning of subsection 11(5), my understanding is the proposed amendment is as follows: "Subsections (1) and (2) do not apply to prevent a person from, (a) evaluating, advising on or reporting on the construction, enlargement or alteration of a building that does not or is not intended to take the place of evaluating, advising or reporting required to be done by an architect."

Mr. Breithaupt: I suppose it would have helped if I had put the phrase after the second "reporting" rather than after the first. That is fine, thank you.

Mr. Mitchell: If I may take a nod of Mr. Fram's head, it appears that particular amendment does not give any problem.

Mr. Fram: It is acceptable.

Mr. Renwick: The Attorney General (Mr. McMurtry) and I have an agreement that I get one amendment in each bill.

Mr. Chairman: This is the one, is it?

Mr. Breithaupt: If that is the case, we should be able to finish the bill by noon.

Mr. Chairman: That is right.

Motion agreed to.

Mr. Renwick: Mr. Kapsa also asked me to move another amendment. I do not know the views of the ministry with respect to it, but he has asked that clause 11(6)(a), the definition of assembly occupancy, be amended by adding, "but does not include a restaurant designed to accommodate 30 or fewer persons consuming food or drink," and that clause 11(6)(k), which is the definition of mercantile occupancy, be amended by adding, "and includes a restaurant designed to accommodate 30 or fewer persons consuming food or drink."

He has asked this be done so that it will conform with the new occupancy definitions contained in part III of the building code, Ontario regulation 583-83, which has just come into effect.

He has enclosed a copy of that building code amendment, which defines mercantile occupancy as group E, and then provides specifically, as a new subsection in that part of the code, that "a restaurant may be classified as a group E mercantile occupancy provided such restaurant is not designed to accommodate more than 30 persons consuming food or drink."

I simply want to move those motions. I ask Mr. Fram to comment on them, if he would.

Mr. Fram: One of the difficulties that is going to exist with the co-existence of the code and the legislation is that the

code gets amended quite frequently. In this case, they did not amend the definition of assembly occupancy or mercantile occupancy in the code. The code has a strange way of going about things.

Mr. Breithaupt: They did not amend both sections to refer to each other in a particular like this?

Mr. Fram: They did not amend the definitions of assembly occupancy and mercantile occupancy at all because those definitions are still the same as these definitions. They played with them in what amounts to a practical guide to building inspectors, saying, "Do not consider an assembly occupancy to be a restaurant with fewer than 30 people." Next week, if there is a fire in a building that has 30 occupants, they will amend it within two weeks, changing the code provision to eliminate that exception.

The great difficulty is in attempting to match the detailed code provisions, which are instructions to building inspectors, with this act which has some permanence.

11:40 a.m.

Since they did not change the definitions of the occupancies in the building code, I would be very reluctant to try to attempt to match the building code exemption style by doing those sorts of things. We are really talking about doughnut or hotdog stands when we are talking about those kinds of occupancies. Historically, those have been ignored and building permits will issue and nothing further will be done. I really am reluctant to try to build the details of the building code provisions into this section, as suggested by the amendment.

First of all, they have not changed the definitions in the building code. They have just played with them as practical matters and they will continue to do those things. In terms of legislation, that is very difficult to contend with.

Mr. Renwick: In view of the explanation, I will withdraw that amendment.

Section 11, as amended, agreed to.

Section 12 agreed to.

On section 13:

Mr. Breithaupt: There was just one comment from the interior design group with respect to the licensing of interior designers to design areas where public safety is a concern.

It would appear to me that perhaps a separate act or private bill might deal with their concerns in this matter, but I thought it would be worth while at least to hear Mr. Fram's comment on this recommendation which was brought before us.

Mr. Fram: I am sorry, I do not understand the recommendation.

Mr. Mitchell: They said consideration should be given to licensing interior designers who design areas where public safety is a concern.

Mr. Fram: The problem of sublicensing is that some within the interior design community would really like to join with the architects.

Mr. Breithaupt: So this is a bridging kind of situation for some people involved?

Mr. Fram: Right. The problem is that the experience in Canada with mixed corporations or mixed associations has not been a happy one. Quebec right now has attempted to put the design technicians in engineering into the engineering corporation. That is the equivalent of the Association of Professional Engineers of Ontario.

The engineering corporation apparently has kicked out its president, who appeared to agree to that, and is now on the rampage about it. Similarly, the interior designers in Alberta are not at all happy about being under the control of the architects. That is a subordinate position under the architects act in Alberta. We have the denturists problem, with control over denturists being given to the dentists.

I tend to analogize this kind of situation with a country that has a basically homogeneous composition introducing an additional element. For example, there is a sense that the Chinese community in Japan is not very well treated. Similarly, when there are identifiable groups within a dominant society, that does not seem to work very well.

What you have to do is get a very heterogeneous society, such as in Ontario, before you can actually make the thing work, where you have many different groups in the same corporation. In terms of professional associations, no one has done it yet really successfully. It may be the way of the future, in terms of architects, designers and so forth, but it will have to be in an organization of equals.

Mr. Breithaupt: A horse-and-rabbit stew does not work out.

Mr. Fram: That is right. The horse will stamp the rabbit to death. At least the rabbit thinks that.

This is a different approach that is being attempted, with the exemption we put in section 11, to try to allow them to carve out areas of expertise but still be in their own association and subject to their own government.

Mr. Williams: I am looking at the amendment which was made to subsection 13(5) and I must be missing something here. It seems like a very awkward way, a sort of negative approach, to try to ensure some protection to an applicant who has been refused a licence. I read the reason for the change by inserting the word

"oral" suggesting that it was not intended that the committee be authorized to make a determination without written submissions.

I think I have read through the section fairly carefully and I do not see any provision which states that the applicant is entitled to make written submission where his application for a licence is likely to be refused; in other words, the right of appeal to any decision. Does that arise in other further sections as to the right of appeal where there is a refusal? I have not gone that far yet.

Mr. Fram: There are really two different situations that are set up in this provision and you will find the equivalent in the Professional Engineers Act. We have the situation of an architect who is trained in the usual manner and meets the qualifications set out in the regulations. He has gone through a faculty of architecture recognized in Ontario and has complied with the academic experience requirements. If he is refused a licence, he has recourse through an appeal procedure to the registration committee. This is set out under the registration committee provisions, section 25.

Mr. Chairman: Page 30.

Mr. Williams: All right.

Mr. Fram: Then we have another group of persons who come from another jurisdiction who do not meet the qualifications. This is an attempt to put a provision in that will allow the evaluation of those credentials.

11:50 a.m.

Strangely enough, one gets applications from people who simply do not even have the rudimentary type of qualifications associated with architecture. To require a whole appeal procedure to evaluate someone who has a matriculation certificate is an onus that is too high, in the view of the association, and the costs are horrendous. To try to hold whole hearings to determine whether a person who is going to be refused a licence out of hand, to call all the volunteer members of the association to hold the hearing on an absurd application is a very expensive process.

The process here is that on academic qualifications the evaluation is a paper evaluation. That is, someone submits his credentials from some other jurisdiction along with an explanation of those credentials and they are evaluated on the basis of a comparison of credentials.

Then there is an experience evaluation committee that may indeed mitigate the requirements imposed by the academic committee. The academic experience committee may say, "You are short two exams," and then the experience evaluation committee says, "You have done work in constructing skyscrapers and we have looked at the designs you have submitted from your work in Argentina and we think this is excellent work." It can knock out the academic requirement for those exams and approve the person. That is the process, as I understand it.

Mr. Williams: I appreciate your comments, Mr. Fram. I have looked at subsections 25(3), (4) and (5), which I see cover the appeal process. However, to my quick reading of it--I am at a disadvantage in not having seen this unfold in the logical steps and sequences that would follow based on the initial discussions by the committee--subsection (5) somehow seems to be out of place. Would that subsection not have been better contained elsewhere?

Mr. Fram: If you get to the registration committee, you get a full hearing. You get all the rules of civil evidence. The idea is simply that if neither committee wants to actually hear this person, it will evaluate on his paper submissions. If the guy has actual academic credentials, they will invite him to make an oral submission but they do not want a full hearing for these things. He comes in and discusses with a group of architects the work he has done, goes over the drawings he has made in the past, submits evidence of his work and they evaluate this on a personal basis.

Mr. Williams: By giving a specific prohibition, if you will, it seems to be implicit that while they are not required to afford to any person a hearing or an opportunity to make an oral submission, the committee may, on the other hand, be required to hold or to afford any person a hearing or an opportunity to make written submissions.

Mr. Fram: I think the "or" is disjunctive. They must afford him the opportunity to make written submissions.

Mr. Williams: That is implied but it does not say that in that section.

Mr. Fram: It is sort of read against the Statutory Powers Procedure Act in that we are attempting to exempt them by saying they do not have to afford him a hearing. Maybe there is some lack of neatness about the drafting.

Mr. Williams: Should that not be made explicit rather than implicit in that section?

Mr. Fram: Perhaps an amendment of that nature should be considered. It probably should begin, "The committee shall grant an opportunity to make written submissions but the committee is not required to hold a hearing or afford an opportunity to make oral submissions," to state the positive.

Mr. Williams: Yes, right.

Mr. Breithaupt: Perhaps we should amend that now and deal with that theme. It is much better to have a positive approach rather than saying some things which might not--

Mr. Williams: That why it caught my attention. It seems so awkward to have a negative provision.

Mr. Fram: You are right. We were conscious of what we were backing out of.

Mr. Williams: Could we set that section aside for the moment and work out something over the noon hour?

Mr. Renwick: I share the concern that Mr. Williams has expressed. I share a somewhat deeper concern or substantially the corollary concern to that of Mr. Williams. I take it you are saying that the academic requirements committee and the experience requirements committee need only look at the academic requirements or the experience requirements set out in the regulations for the issuance of a licence or a temporary licence.

Therefore, if the regulations provide only the information which is required for a person who is indigenous to Canada in so far as his experience and his academic qualifications are concerned, anyone else is automatically arbitrarily subject to the refusal by the committee under the section that we are looking at and he does not have any right of appeal.

We had this same problem with doctors coming in, this question of foreign qualifications or experience and the equation of those to Canadian qualifications and experience. Admitting the difficulties in many cases of making those comparisons, it lends itself to wide open abuse in the absence of the usual procedures for some form of due process for the person.

For example, if you look at subsection 13(6), once the registrar gives notice to the applicant of the determination by the committee, the applicant is stuck with the fact that the determination is final and binding on the registrar and on the applicant by subsection (4). There is no obligation to give written reasons as to why the applicant was refused. Even if we inserted a provision that written reasons were required, the written reason could simply be that he has not met the academic requirements set out in the regulations.

Mr. Williams: Is that not covered in subsection 25(1), that written reasons must be given where the registrar proposes to refuse an application for a licence?

Mr. Renwick: But subsection 25(2) says subsection (1) does not apply in respect of a proposal to refuse to issue a certificate. In other words, he does not get the benefit of that under subsection (2).

Immigration rules make it confusing enough, but generally speaking a person with a professional background from another country has a leg up with respect to being admitted to the country. The problem of what are the professional qualifications for admission for immigration purposes and what will be accepted by the professional societies has been a long outstanding bone of contention.

12 noon

I would be very concerned if we do not have some way of finding out the basis on which those decisions are being made. Something more than written reasons must be given because if you

simply say, "You do not meet the qualifications," that does not answer the substantive question, which is, if I am from the University of Karachi and have practised engineering in India, and it does not happen to be set out in the regulations that that is a recognized academic qualification and I make an application and the registrar refers it to the academic and experience requirements committees, I am likely to get a letter which simply says, "You do not meet the regulations under section 26."

Mr. Breithaupt: It does not say what you might need in order to get up to that requirement.

Mr. Renwick: No. It does not say that the association or the professional bodies and the universities in Canada have made a real effort to determine some equations between foreign training and experience and Canadian training and experience. If you come in here as a landed immigrant and you have those qualifications, I think it is important that those equations be made. I am not certain how we solve the problem, but I think we have to deal with it.

Mr. Fram: I think we are dealing with a divergence between the practice and the provision. We are talking about the professional engineers who have had this process for 30 years or more. In effect, the applicant submits his written credentials and they are evaluated by a group of engineers drawn primarily from the universities.

They set a number of examinations based on the evaluation of the academic credentials and the matter is referred to the experience requirements committee. They go under different names in the existing regulations and this whole process is not set out in the existing Professional Engineers Act. It is a process that exists by regulation.

On a realistic application, the experience requirements committee will invite the person to make oral submissions. These committee members are engineers practising in Ontario in the same area of specialization as professed to by the applicant. It is not a hearing, it is a meeting. They evaluate the individual's drawings, his experience and the companies for whom he has worked. They will ask him questions about his experience, who he has worked for, the kind of work he did and they will reduce, and sometimes eliminate, the academic requirements imposed by the academic requirements committee based simply on the paper credentials.

Then the applicant will be sent a set of confirmatory examinations to confirm that the whole thing is not a fraud on paper. At that stage, if he succeeds in these confirmatory exams or if he has an illustrious background, he may be exempted from everything except the ethics and practice exam and he will be given a licence. Otherwise, he will have to meet these examinations to confirm his background.

We were not capable of putting all of that process in statutory language. I wanted to put the existence of the process into the act because it is an important process. It now appears

only in the regulations under the Professional Engineers Act and we wanted to indicate that this process is in the statute. The description does not correspond exactly to the process, except in the rudimentaries of showing that there are these committees.

Mr. Williams: While I had addressed the issue of subsection (5), trying to get that tidied up, I had in my mind the same concern that Mr. Renwick had with regard to giving written reasons about those matters under subsection 13(3), clauses (a), (b) and (c). I thought they were covered under subsection 25(1), but then Mr. Renwick picked up very quickly that they are specifically excepted under subsection 25(2). This raises the question why.

I have heard Mr. Fram's observations. Given the two types of situations, I am not sure the distinction being made is justified, that written reasons need not be given in one situation but they must in another. I may again be missing the point.

Mr. Fram: In fact, they do get, in writing from the committee, a statement as to what examinations have been set and what further evidence is required. Those things would be set out in the regulations.

Mr. Williams: Again, it is a matter of consistency here, particularly when subsection 25(2), on the face of it, specifically excludes the right to a written reason. You are suggesting that protection is there, hidden somewhere in the regulations, and that procedurally they will be assured of getting some reason for a turndown. Why would it not be up front like it is with regard to the matters that come under subsection 25(1)?

I do not know why you are making a distinction within the body of the act. You are assuring the committee that there is some protection given to the applicant somewhere in the regulations with regard to matters coming under subsection 13(3), even though it is not so spelled out that written reasons have to be given.

Why would you make this distinction within the body of the act and yet assure us that the party will still get some satisfaction by having written reasons through the regulatory process?

Mr. Fram: I know why it is structured this way. It is structured this way because of the process for refusal of a regular student. In that case, the registrar can evaluate and it never goes to these committees. The registrar gives reasons.

What is not clear is that the academic requirements committee and the experience requirements committee must produce something for the applicant. Perhaps if we have some time in the noon hour we can think about whether something can be produced to make that clear.

Mr. Williams: I would think the defining of subsection 13(3) would mirror somewhat subsection 25(1).

Mr. Renwick: There is no merit in the particular words I

have used, but I think it has to be dealt with in some way along these lines at the end of subsection 13(6), "and if adverse to the applicant with written reasons setting out in what particulars the applicant has failed to meet the academic or experience requirements or both."

They cannot simply say, "You did not meet what is set out in the regulations." They have to say, "This is what is lacking in your experience and qualifications that made us say no, even though you are a graduate of the University of Karachi and have practised architecture in India," or whatever equivalent.

Mr. Fram: That is a very good suggestion. We will work on something along that line over the noon hour.

Mr. Renwick: I am not suggesting that is a complete solution to the problem. It does not impose any onus on the Ontario Association of Architects to establish as best it can equivalence of qualifications and experience which would be acceptable if the applicants are non-Canadian.

12:10 p.m.

Mr. Fram: If we take the example of the engineering practice--and there are a number of people, of course, dissatisfied with that process, but, considering the number of persons from diverse backgrounds who have, in fact, become engineers in Ontario, I think they have done an excellent job of bridging. Perhaps the best job of bridging of any profession in Ontario is exhibited by the Association of Professional Engineers of Ontario.

There are still people who are dissatisfied, but there will be with any process. In the past, the architects have not used this process so we must assume that they will exercise it in good faith, as the engineers have done for the past 40 years.

Mr. Renwick: Mr. Chairman, you will notice on clause 13(1)(c) we have this provision: "is a citizen of Canada or has the status of a permanent resident of Canada." I am still somewhat concerned that we would be passing a statute which may be begging an issue of constitutionality--as far as the membership on the council is concerned. I do not think that the world will come to an end if the qualification for an election to the council mirrored the wording which is applicable to a natural person who has applied in accordance with the regulations for a licence.

Mr. Chairman: Any comments, Mr. Fram?

Mr. Fram: It is an administrative nightmare to have the council hold elections across Canada and have council members be assembled to decide the fundamental issues when they are situated all across Canada. The residency in Ontario is--

Mr. Renwick: I have no problem with the residency in Ontario. I simply want to add the words "has the status of a permanent resident." "A permanent resident," and, "is resident in Ontario" would be fine.

Mr. Fram: Personally, I cannot say anything.

Mr. Renwick: I will not mention it again, but I am always a little bit worried that we are begging an argument in a statute. We recognize people in Canada who have status as permanent residents. The commitment is there. The people are here. I see no reason why, if they are eligible for membership, they should not be eligible for election to the council with the rest of the Ontario architects.

Mr. Chairman: Has any other member anything to add to Mr. Renwick's point?

Mr. Williams: Clause 13(1)(c), it seemed to me, was broadly enough worded that it would be less parochial in nature if we adopted--as I understood Mr. Renwick's comments--the suggestion that they had to be licensed in Ontario. Was I understanding you correctly that you thought that would be a provision and that provision should only prevail in lieu of clause (c), Mr. Renwick? Is that what you were suggesting, or am I off base?

Mr. Fram: Perhaps I can clarify. Mr. Renwick was going back to the provisions in section 3.

Mr. Williams: He started talking about subsection 13(3).

Mr. Fram: It triggered his thought, I believe.

Mr. Williams: I thought he was hung up on that. Now he is back to section 3?

Mr. Fram: Yes, subsection 3(4).

Mr. Williams: Which we have already passed. No comment.

Mr. Renwick: I think the fact we have passed it would not prevent the Attorney General from moving an amendment if he saw fit. We all know there would be a very serious problem with this bill if clause 13(1)(c) simply read, "is a citizen of Canada".

Mr. Williams: That is why I am comfortable with the section the way it reads. I think it is broadly based enough that it is not limited simply to citizenship. It ties in with it being countrywide. Perhaps of even greater importance, it is a member of an organization of architects that is recommended by the council. There are three factors there. I think it is broadly based enough that--

Mr. Chairman: We are going to stand the section down anyway in the light of section 5. Maybe the Attorney General can reflect upon it if he so desires. We will move on.

On section 14:

Mr. Renwick: On section 14, we just grandfathered the corporations that hold subsisting certificates in section 12, as I understand it. Are there some that do not meet the requirements

set out in section 14? I am just curious as to whether there were or were not. Are there now some?

Mr. Fram: Right now there are no architectural corporations at all. This is the first mention. Section 12 is to get out of the Business Corporations Act provision that no corporation may practice the profession.

Mr. Renwick: I see, thank you.

Section 14 agreed to.

Section 15 agreed to.

Section 16, as reprinted, agreed to.

On section 17:

Mr. Renwick: What is subsection 17(2)? Is that simply a requirement that a person engage in some kind of upgrading of his qualifications?

Mr. Fram: That is right. It is the idea that if you go out of practice for five years, you had better work in co-operation with a licensed member for a while to get your hand in.

Section 17 agreed to.

On section 18:

Mr. Renwick: What about the submission made to us by the gentleman from Hamilton who builds churches? He is not an architect, but he is a member of the Association of Professional Engineers of Ontario. Do you recall that, Mr. Breithaupt?

Mr. Breithaupt: That was Mr. Schneider, was it not?

Mr. Chairman: Exhibit 35; Mr. Schneider.

Mr. Renwick: Is this intended to meet the needs of that particular person?

12:20 p.m.

Mr. Fram: Essentially, as a professional engineer, under this provision he could always employ an architect and he could get his certificate to practice both professions. His concern was really the grandfathering provision that he himself--

Mr. Renwick: Yes. Is there a grandfather provision?

Mr. Fram: The grandfathering provision is near the end of the act dealing with the joint practice board, section 52.

Mr. Renwick: So we can deal with his situation when we arrive at section 52. Thank you.

Section 18 agreed to.

Section 19 agreed to.

On section 20:

Mr. Breithaupt: The Consumer and Corporate Affairs Canada submission dealt with an additional provision concerning professional misconduct and we have the detail of that, which I will not read further. On page 12 of the summary of the comments with respect to section 20 they set out some details with respect to professional misconduct .

Could we have a comment from Mr. Fram on that overview and their suggestions?

Mr. Fram: Actually I do not think it related to those two. The suspicion was that the power to regulate advertising was of some concern, although they did point out that neither the architects nor the engineers impose, under their existing power, any prohibition of reasonable advertising. It is indeed our own profession that seems to be the worst culprit in this connection, if that is the right word.

Their concern was that, if they did pass a regulation controlling advertising and it came up in the Professional Engineers Act in connection with the suggested fee schedule, they might use the disciplinary process to enforce the regulatory power. It does not really come up here. It would probably come up in the disciplinary process and it could have been raised, I suppose, in the power to regulate advertising.

Mr. Renwick: It would not be raised as a matter of integrity.

Mr. Fram: That is right. We are dealing with integrity, law and honesty, which are the basis for any profession.

Mr. Renwick: And social disapproval.

Section 20 agreed to.

The committee recessed at 12:25 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
ARCHITECTS ACT
TUESDAY, MARCH 6, 1984
Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Grande, T. (Oakwood NDP)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durnam-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitutions:

Hodgson, W. (York North PC) for Mr. Eves
Williams, J. R. (Oriole PC) for Mr. Gillies

Also taking part:

McMurtry, Hon. R. R., Attorney General (Eglinton PC)

Clerk: Arnott, D.

From the Ministry of the Attorney General:

Fram, S. V., Counsel, Policy Development Division
Tucker, S., Legislative Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, March 6, 1984

The committee resumed at 2:06 p.m. in committee room 1.

ARCHITECTS ACT
(continued)

Resuming consideration of Bill 122, An Act to revise the Architects Act.

On section 13:

Mr. Chairman: I see a quorum. The clerk is passing out amendments to subsections 13(5) and (6). I believe we had left off at section 21. We will revert now to section 13 and deal with these government amendments at this time.

Mr. Mitchell: So they can be dealt with, Mr. Chairman, I imagine the motion should be made and read into the record.

Mr. Chairman: Mr. Mitchell moves that subsection 13(5) of the bill be amended by adding after "committee" in the first line "shall receive written representations from an applicant, but."

Motion agreed to.

Mr. Renwick: I am not happy with subsection 13(6). It does not meet the point because the requirement can simply be that they did not comply with the regulations. That is not an answer to the problem I was concerned with.

Mr. Mitchell: Perhaps the amendment should be introduced.

Mr. Chairman: Mr. Mitchell moves that subsection 13(6) of the bill be amended by adding at the end thereof, "and of any requirement that the committee has determined has not been met by the applicant."

We have all heard the motion. Is there any discussion on Mr. Mitchell's motion?

Mr. Renwick: We had a lengthy discussion this morning and there is no need to repeat it. The proposed amendment, in my judgement, does not meet the concern the member for Oriole (Mr. Williams) and I tried to express this morning.

Mr. Breithaupt: Can we improve upon it?

Mr. Renwick: A simple answer to this would be that the person failed to meet the requirements set out in the regulations, and that is not the point. What we were talking about is establishing the equivalents of off-Ontario-shore qualifications

and work experience, and this would not meet the requirements. I would vote against it.

Mr. Breithaupt: Is there any way we can improve upon this to deal with that concern, which is an attempt not only to come up with some encouragement of standards for proper equivalents of experience and qualifications, but also to inform the applicant of the several items to be upgraded or completed so the applicant can be successful in his or her attempt to register.

I did not quite hear Mr. Fram's suggestion.

Mr. Fram: I was just looking--

Mr. MacQuarrie: He is suggesting, "any particular requirements the committee has determined have not been met by the applicant."

Mr. Fram: Try that one. They tell the applicant specifically which area of the requirements he does not now meet. In fact, they tell him what courses he has to take or what experience requirement he has to achieve before he will be qualified.

Mr. Breithaupt: It is a positive listing of what is needed, as opposed to simply a negative recitation of, "You have not met requirement X or Y."

Mr. MacQuarrie: No, but of "any specific requirement that the committee has determined has not been met by the applicant" or that the applicant--

Mr. Breithaupt: Any specific or any particular--

Mr. MacQuarrie: "Any specific requirement that the committee has determined that the applicant must meet." I have put it a little more positively, rather than "has not been met."

Mr. Breithaupt: That is all right too.

Mr. Fram: They are all acceptable.

Mr. Breithaupt: I think we are agreed on what we would like to accomplish, if the wording--

Mr. MacQuarrie: If they tell him what he has to meet, that presumably answers Mr. Renwick's--

Mr. Breithaupt: It would be better to have it in a positive frame.

Mr. Fram: We tried both. Both are okay.

Mr. Breithaupt: Yes, sure.

Mr. Mitchell: Perhaps an amendment--

Mr. MacQuarrie: I would be inclined to suggest "and of

any specific requirement that the committee has determined that the applicant must meet."

Mr. Breithaupt: I am content with that.

Mr. Mitchell: If that is acceptable, it requires a motion. Why not withdraw the other motion and just put a new motion forward?

Mr. Breithaupt: Let us do that.

Mr. Chairman: That sounds reasonable. Do you withdraw? Is that the motion you indicated?

Mr. Mitchell: Yes. Someone has the other one written out. I presume the clerk has given me the gist of it.

Mr. Chairman: Mr. Mitchell moves that subsection 13(6) of the bill be amended by adding at the end thereof, "and of any specific requirement that the committee has determined that the applicant must meet."

Mr. Renwick: It is determined that he can come in and therefore it is not relevant. It seems to me you have to put in some reference to an adverse decision or determination, otherwise it just--

Mr. MacQuarrie: Or give notice of the determination. Then they give him notice also of any specific requirement he has to meet.

Mr. Breithaupt: Obviously, they would not be giving notice if he was accepted.

Mr. Renwick: They give notice if he is accepted, as well as if he is rejected. That is what I understand it to mean.

Mr. Breithaupt: The other would apply only if the person was rejected.

Mr. Renwick: Yes, if he was rejected.

Mr. MacQuarrie: Or you can put, "and if rejected, of any specific requirement that the...."

Mr. Breithaupt: Obviously, there would not be anything there if he was accepted, so it would only apply if the person was rejected.

Mr. MacQuarrie: Yes.

Mr. Chairman: So there is no point in--

Interjection: It is not necessary.

Mr. Chairman: We have all heard Mr. Mitchell's motion--

Mr. Renwick: Just a second now.

Mr. Chairman: All right.

Mr. Renwick: I do not know whether this is an improvement or not, but I think I would feel better if it stated, "and if rejected...shall give notice to the applicant of a determination by a committee under subsection 3, and if the applicant is rejected, then notice shall detail the specific requirements that the applicant must meet in order to be eligible for" whatever else has to be stated.

Mr. Mitchell: That is basically the same thing, is it not?

Mr. Renwick: It may be, but I want to get across that the piece of paper will have to set out in detail the requirements the applicant must meet.

Mr. Mitchell: Does that give you any difficulty, Mr. Fram?

Mr. Fram: No.

Mr. Mitchell: Again, I think this one should be withdrawn and if that is acceptable, if Mr. Renwick wishes to introduce it--

Mr. Breithaupt: That is two amendments in one bill, but I guess we could do that.

Mr. Chairman: You only asked for one amendment, Mr. Renwick.

Mr. Mitchell: I will withdraw that motion, Mr. Chairman, basing that on the--

Mr. MacQuarrie: Could we hear that again, Mr. Renwick?

Mr. Renwick: Did you write it down, counsel?

Mr. Tucker: I took it down as far as I could.

Mr. Chairman: Mr. Renwick moves that subsection 13(6) of the bill be amended by adding at the end thereof, "and if the applicant is rejected, the notice shall detail the specific requirements that the applicant must meet."

Mr. Renwick: Yes. Now it may require some further words, but that would be all right with me.

Motion agreed to.

Section 13, as amended, agreed to.

Mr. Chairman: I believe we concluded at section 20. We will be moving to section 21 on page 27.

Is there any discussion on section 21?

Mr. Mitchell: I would say, Mr. Chairman, based on the library research presentation to us of the summary of recommendations, we could conceivably approve those sections from section 20 to 39 inclusive.

Mr. Renwick: I suggest we labour on the way we are.

Mr. Chairman: All right. Let us take it one section at a time. It is just as quick. We are now at section 21.

Section 21 agreed to.

Sections 22 and 23, as reprinted, agreed to.

On section 24:

Mr. Renwick: I am not certain that I fully understand the procedure with respect to the powers of the registrar in the change in the wording which has been introduced, "the refusal to issue, suspend or to revoke a temporary licence." Is there any due process available to the holder of such a licence?

Mr. Fram: Yes. The appeal procedure applies.

Mr. Renwick: Where is that?

Mr. Fram: Section 25 is where the appeal--

2:20 p.m.

Mr. Renwick: Yes, but where does it say in section 24 that the appeal procedure in section 25 applies? Maybe I have just missed it.

Mr. Fram: It is really when you get into the complaints part in subsections 2 and 3, where it has not been disposed of within 90 days of the complaint. Where the complainant is not satisfied, he may apply for a review. So we really have the complaints review counsellor not having a discretion except for frivolous and vexatious matters with respect to a complainant who believes there has been a whitewashing of a profession. Then he has to look into the matter.

There are really two functions he performs. One is a general, ongoing review of procedures for complaints and the other is the individual complainant's dissatisfaction.

Mr. Renwick: If it does not meet the tests set out in section 5, then he has to conduct a review. Is that right?

Mr. Fram: That is right.

Mr. MacQuarrie: I would like to direct a question to Mr. Fram. Regarding the committee investigating and dealing with complaints made by members of the public, would those be complaints apart from professional misconduct or incompetence, in which you have the registrar capable of acting on his own

initiative, moving in and seizing and searching, that sort of thing?

Mr. Fram: There may be many types of complaints about incompetence where there is no need to search or do an investigation, but they may be associated as well.

Mr. MacQuarrie: In that instance, the registrar is seemingly the arbitrator, or he may refer it to whatever committee or subcommittee he thinks appropriate.

Mr. Fram: If he has sent out and investigated, that information will be put before the complaints committee in aiding in its determination of whether this matter should go to the discipline committee. That is really a power in aid of the further examination of a complaint.

Mr. MacQuarrie: Yes, he reports the results of his investigation to a counsellor or such committee as he considers appropriate.

Mr. Chairman: All right. With that, shall section 30, as reprinted, carry?

Mr. Williams: On subclause 2(c), "take such action as it considers appropriate." This point may have been covered, but were you not trying to make a determination that such action does not include determining guilt or incompetence?

Mr. Fram: That is right.

Mr. Williams: Should that not be so stated in the section? "Take such action other than determination of guilt or incompetence as it considers appropriate in the circumstances."

Mr. Fram: I am not exactly sure of all the circumstances, but I would assume there are times when a professional comes before the committee, asks him to attend and makes in part a confession of a misdemeanour, something that is not serious enough for him to be suspended or to take real disciplinary action. The committee can reprimand him, but the matter would not have to go to the discipline committee.

2:30 p.m.

Mr. Williams: Yes, that is the thrust of it that I picked up when I came in but I do not think that section is saying that. I think clause (c) troubles me because at this stage of the proceedings it gives this committee the power to take such action as it considers pertinent. It is not inconsistent with the act. That virtually gives them the power to do anything, as I read it. If you want to make it clear it is at this stage of the proceedings only and under no circumstances permits the determination of guilt or incompetence, then it should be so stated.

Mr. Fram: I think that would be inconsistent with

section 34, which outlines the powers of the disciplinary committee.

Mr. MacQuarrie: We are under this being "not inconsistent."

Mr. Fram: That is right. One of the things dealt with in section 34 is discipline. I think by saying that it is not inconsistent with the discipline powers, we are essentially saying it can do only that much.

Mr. Williams: You are making the reason for the amendment, the reason for change under subsection 30(5) quite clear. You are making it quite clear that the complaints committee does not determine guilt or incompetence. Where does it specifically state that in that section?

Mr. Fram: It says in subsection 34(1): "A discipline committee shall...hear and determine allegations of professional misconduct or incompetence against a member of the association or the holder of a certificate." That is the function of the discipline committee. I think you have to read the whole act together in order to determine these functions.

Mr. Williams: As long as you are giving a reason for change, but I do not see that being clarified. That catch-all clause is what concerns me in that section.

Mr. Breithaupt: Mr. Williams raises the point as to how these tie together so we are assured the responsibilities are clearly set out. Perhaps Mr. Fram could comment further. You referred to clause 34(1)(a) as the source of the authority to act. Do you think it is necessary to refer earlier under subsection 30(5)? The detail comes later.

Mr. Fram: Yes, that is right. My concern is to allow this committee full freedom short of a discipline matter. For example, one of the things the complaints committee can do is on hearing or on looking at this issue, they can take an action. For example, they can recommend to the registrar that there appears to be reasonable and probable grounds for an investigation. So the process need not only come from the registrar to the complaints committee, but when the complaints committee starts looking into a matter that initially may look to be not very serious but once it gets looking at the designs or whatever it is and sees it is a serious matter, it can direct an investigation.

If you start limiting and the limitation of (c) is to "other than that is not inconsistent with the act or the regulation" that may fetter that complaints committee in carrying out the very important public duty of getting before the discipline committee the appropriate cases of discipline.

Mr. Williams: I am not suggesting the clause be deleted. I am just questioning whether it should be qualified. We might want an explanatory note giving rise to the amendment. It still does not seem to me to clarify that point.

Mr. Fram: Do you have some words to suggest?

Mr. Williams: No. I just said if you are making the point and a reason for change, make it clear the complaints committee is not the stage at which one is empowered to determine guilt or incompetency. Why are you not expressly stating that and thereby qualifying appropriately that clause (c)? As I said earlier, why are you not having it read, "take such action other than a determination of guilt or incompetence as it considers appropriate in the circumstances"?

That is not inconsistent with this act, the regulations or the bylaws. Something to that effect is required just to make the specific point that no matter what action the committee takes, certainly one thing it is not empowered to do at that stage of the proceedings is to determine guilt or incompetence.

Mr. Tucker: Mr. Chairman, it seems clear in reading the act as a whole that that is the one thing the complaints committee cannot do. It cannot act as a discipline committee. There is a discipline committee.

Mr. Williams: What other section is stating that?

Mr. Tucker: There is a section dealing with the discipline committee later on in this bill.

Mr. MacQuarrie: Section 33.

Mr. Tucker: That would be usurping the function of the discipline committee.

Mr. Williams: But we are talking about the complaints committee. All right, you are saying section 33 is--

Mr. MacQuarrie: Section 34 spells out the role of the discipline committee.

Mr. Williams: That is giving the sole power to--

Mr. Fram: There are also all the procedures in there, the standard of proof, evidence, etc.

Mr. Williams: I have to admit I am dealing with the section in isolation. I am looking at it at its face value without relating it to these other sections. If you are satisfied that is met further on, fine.

Mr. MacQuarrie: I have one other bit of trouble in my mind in trying to reconcile the report of the registrar, that is, the registrar on his own initiative going into situations where he feels there has been professional misconduct or incompetence and then reporting the results of the investigation to the council or such committee as he considers appropriate.

I look at the duties of the complaints committee as specified. We have, "consider and investigate complaints made by members of the public or members of the association regarding

conduct or actions," and no action taken unless a written complaint has been filed with the registrar. Then we have what it may do in accordance with the information it receives.

Then I look at the discipline committee and it says, "when so directed by the council or the complaints committee" to "hear and determine matters referred to it under section 30, 33 or 42" and "perform such other duties." I have some difficulty in my own mind determining how that registrar's report actually comes before either the complaints committee or the discipline committee or whether it should be referred to in either of those committees' duties.

Mr. Tucker: It is on page 48. Mr. Chairman, the report of the registrar goes to the council or to such committee as the registrar considers appropriate.

2:40 p.m.

Mr. MacQuarrie: Yes, but then when you are looking at the duties of the committees and what they are to do, nowhere does it mention that they are to deal with the registrar's report.

Mr. Fram: I think that fits in with (b) under subsection 1. That would be part of the records and documents obtained from the investigation. If there has been an investigation, we have by that time a written complaint to go to the complaint committee--

Mr. MacQuarrie: You have a complaint by the registrar.

Mr. Fram: Or a complaint by a member of the association.

Mr. MacQuarrie: I can see what they are trying to accomplish, but I have a difficulty in linking that one section of the registrar's report and the mechanism of bringing it before a committee.

Mr. Fram: If there is a complaint in connection with the report of the investigation laid by a member of the public or a member of the association, that report could go to the complaints committee. However, if it is a serious investigation and there is not a complaint, that report could go to the council and it could direct a disciplinary hearing. So that is what happens with the registrar's report.

Mr. MacQuarrie: Then he is given the alternative in dealing with his report of either sending it to a committee or council?

Mr. Fram: That is right. If there was already a complaint before the complaints committee he would be sending it there.

Mr. MacQuarrie: If there was a written complaint he was acting on. The typical situation that I thought the registrar's investigation was to cover was where something untoward happened in terms of construction or otherwise. It was brought to his attention, he felt there was a likelihood of either misconduct or

incompetence; he moves in, carries out his investigation and prepares his report. In those circumstances we have no complaint except his acting on his own initiative.

When I began looking at the circumstances under which the complaints and discipline committees acted, I could not see how that report is brought back definitely in front of either of those committees. There is reference to being able to send it back to the committee and back to council, but nowhere is the registrar's report mentioned.

Section 30, as reprinted, agreed to.

Section 31 agreed to.

On section 32:

Mr. Renwick: Is this one of the areas that Mr. MacQuarrie is concerned about?

Mr. MacQuarrie: I was thinking of inserting clause (c) into subsection 31(4) referring specifically to the registrar's report, and the same with the discipline committee--inserting specific reference to the registrar's report.

Mr. Fram: We do not want the registrar's report to go to the discipline committee, because they have to prepare a case.

Mr. MacQuarrie: The complaints committee then.

Mr. Fram: Right.

Section 32 agreed to.

Sections 33 and 34 agreed to.

On section 35:

Mr. Renwick: It was interesting in the Courts of Justice Act yesterday that the minister moved the deletion of clause (4)(a), which reads, "matters involving public security may be disclosed," in an equivalent subsection, subsection 4, with respect to court proceedings being otherwise than in public.

In subsection 4 we have this provision with respect to denying a party whose conduct is being investigated the opportunity of having the hearing held in public if there is a matter involving public security. Yesterday, in the case of the courts, the minister moved to eliminate that clause.

Mr. MacQuarrie: The supplementary clause for the section from which that was deleted read entirely differently from the one here.

Mr. Renwick: But the point is the same, the possibility of harm. That was the language in Bill 100, the possibility of harm or injury or whatever to an individual and so on. Here it is in clause 35(4)(b): "...the possible disclosure of intimate

financial or personal matters outweighs the desirability of holding the hearing in public."

All I am drawing to your attention is that it seems strange. If it is not a ground for a court hearing in camera, then it should not be a ground for holding this kind of investigation, because you are denying the person whose conduct is being investigated the opportunity of having a public hearing. It seems a little anomalous.

Mr. MacQuarrie: Somehow, though, we were able to argue the residual clause yesterday to be broad enough to embrace public security.

Mr. Renwick: I heard the argument and I was not impressed. The language, basically, was the possible harm or injury to the person. The reason I wanted to draw attention to this was that Mr. Fram would not have been aware of that, and you might note in Bill 100 that we did delete that matter. It may well be that you should review it with the minister and your colleagues who were here, because here it is the individual asking that his case be heard in public.

Mr. Fram: That is right. I do not really see any--

Mr. Renwick: It came out of McRuer.

Mr. Fram: That is right. They all came out of McRuer, and I do not see that clauses (a) and (b), where the--

Mr. Renwick: Clause (b) is fine with me.

Mr. Fram: Certainly clause (a). I cannot see that a matter of public security is going to come up under the Architects Act.

Mr. Renwick: It is a little difficult to conceive.

Mr. Fram: That is right. Perhaps someone would like to move the deletion of clause (a).

Mr. Renwick: I will move the deletion of clause (a) and the appropriate changes--no, I will let someone else move it.

Mr. Breithaupt: Perhaps the best way to deal with this is to have Mr. Fram discuss this with the others who were here yesterday on Bill 100 to see if the Attorney General proposes to remove this following the same attitude which he has shown. He may well choose to do that when we go back to committee stage in the House, because there are two other things as well that he was going to refer to and, therefore, I could have the opportunity then of dealing with this one point.

There were two other things in Bill 100 that had to be changed, and it may be that as a result something here will be required for the committee of the whole in the House for several moments.

Mr. Chairman: That seems to be a reasonable approach, Mr. Breithaupt.

Section 35 agreed to.

Section 36 agreed to.

On section 37:

Mr. Renwick: Perhaps we could have a word of explanation on the amendment underlined at the top of page 46 in clause (a).

Mr. Fram: The fees mediation committee was an idea of the Professional Organizations Committee. I must admit that the Association of Professional Engineers of Ontario and the Ontario Architects Association have a great deal of trepidation about dealing with it but have decided that in the public interest they should give it a try.

When you are trying something new that you have not had before, there are all sorts of things you can contemplate that might happen that would make fees mediation inappropriate. Let us say you are in the middle of a court proceeding, for example, and the architect in this case is suing for his fees. They have been before the court and then all of a sudden the person who may be liable for these fees says, "I want fees mediation." The matter is before the court and the committee should have the ability in those circumstances, where it is inappropriate to mediate, to be able to decline jurisdiction to mediate a matter of that nature.

There are other circumstances like that where it would be clearly inappropriate or of no effect for the committee to attempt a mediation with a totally recalcitrant party who is not going to listen to an agreement. It would be a waste of the volunteer time of the association.

You have to appreciate, and I do not think the Professional Organizations Committee did appreciate, that if you were involved in a mediation of a large architectural or engineering project such as the Commerce Court, it could take a vast amount of time and expense to attempt a mediation like this.

Even mediation of a domestic dispute can be an enormously time-consuming matter and it could be in professional matters as well. There may just be times when it is completely inappropriate to attempt a mediation, and this was to give them some scope to say at that time, "It is just inappropriate to do so in this case."

Section 37, as reprinted, agreed to.

On section 38:

Mr. Renwick: It is very wide open as to who can be appointed. There is no qualifying adjective of any kind applied to the person who can conduct an inquiry under part II of the Public Inquiries Act.

Mr. Fram: I would like to mention that there is a

project going on now to bring all the powers of entry into conformity with the charter. It is a fairly substantial process and it is likely the end result will be a statute law amendment act which will amend all the powers of entry and powers of search and seizure to bring them into conformity with the charter.

Knowing that, I was very reluctant to do the process and try to reinvent the wheel while they were trying to rationalize all the various types of powers that now exist.

This one is patterned on the Health Disciplines Act, with a few changes in the reprint based on what Mr. Renwick had said during the public hearings on the bill. It is really just a holding action--basically a McRuerized version--that went into the Health Disciplines Act, and they are doing the whole thing over again. It is an attempt to just have this for now.

Mr. Williams: You are talking about apples and oranges as regards having investigative powers and right of entry into health legislation when public health and safety are at issue. This is a different circumstance.

Mr. Fram: The contention is that it is not a different circumstance. An investigation takes place if we have a design for a building that is going up and we think there is going to be a serious risk. The registrar is not going to trigger an investigation unless there is some serious risk involved. When the investigation takes place is when we have a high-rise building without structural engineering components or something like that--where there is some fear that there is a danger to the public. They have to get the drawings to find out further before those things are either removed or destroyed.

Mr. Chairman: Counsel, you have something to add?

Mr. Tucker: Mr. Chairman, regarding the reference to the Health Disciplines Act, there is a similarity because we are dealing with the professional--the doctor or one of the other disciplines. Here again you are dealing with a professional. It is in that respect that they are similar. You are dealing with the professional in the practice of his profession. This is an investigation into the method of carrying out his practice.

Mr. Williams: But the other is directly related to the health and wellbeing of an individual or a group of individuals under the Health Disciplines Act. Here, I suggest, it is not as immediate or as direct an effect to go in and seize the books or documentation of a professional, because it does not have the same kind of direct bearing on the immediate wellbeing of a person's very physical character.

Mr. Mitchell: I might question that, Mr. Williams. What about the people working on a site where, to use Mr. Fram's comments, there is some very grave concern that there are certain strengths not built into concrete or whatever? Mr. MacQuarrie and I were aware of a situation like that; so you do have safety of people. Surely that is as important as their health and welfare.

3 p.m.

Mr. Williams: If somebody raises a doubt about the structural integrity of a building in the way it is being constructed, certainly these professional people may not be able to make that determination from an on-site inspection of the premises without having to go to the architect who is saying the qualifications for the construction of the building are within the guidelines.

Mr. Mitchell: Except that "as built" may not be as designed and approved by all the various approving bodies. I think that is the point Mr. Fram was getting at. They may go in, but if they do not have the blueprints or the specifications necessary for them to tell what it is supposed to be, then that means involved testing. If documentation is available, the question may be answered immediately. Those documents could be changed or whatever.

Mr. Chairman: Does anyone have anything further to add?

Mr. MacQuarrie: All I have is a practical situation that comes to mind where a very skilled subcontractor on a job site expressed some serious concern about exactly what was going on with certain aspects of the design. It so happened that within a short time, a section of the building gave way. That was just a skilled subtrade knowing something about construction and being able to spot something; I do not know whether it was incompetence or poor materials, because a variety of things come into it.

Mr. Williams: I think you are agreeing with the point I made earlier. Surely if there were some question about the physical integrity of the building under construction, that could be determined on site as in the case you said. You could see there was something missing in what they were doing.

Mr. MacQuarrie: I also think that if there were something wrong structurally, they might want to have immediate access to the drawings. That is the right way to tell whether it was the contractor's fault by going with poor-quality material or whether it was in the initial design.

Mr. Mitchell: I suggest you could not tell bearing weight without having the specifications and drawings. An on-site inspection would not tell you that.

Section 38, as reprinted, agreed to.

Section 39, as reprinted, agreed to.

Sections 40 to 45, inclusive, agreed to.

On section 46:

Mr. Renwick: Some day I would really like to understand where the ministry picks up the figures it uses for these penalties.

Section 46, as reprinted, agreed to.

Sections 47 and 48, as reprinted, agreed to.

On section 49:

Mr. Renwick: That is kind of a reflection on Canada Post, is it not?

Mr. Mitchell: You are saying maybe it should be 15 days?

Mr. Fram: They are getting better.

Section 49 agreed to.

Sections 50 and 51 agreed to.

Section 52, as reprinted, agreed to.

On section 53:

Mr. Renwick: Is there any recourse against a failure to adopt the recommendation?

Mr. Fram: The reasons have to be given in writing to the Joint Practice Board and to the applicant for the licence. The real recourse will be the endless warfare between the two professions once again if they fail to accept the recommendations of the Joint Practice Board. It was bitterly fought over a long period, and I will be very surprised if I ever see a recommendation of the Joint Practice Board being ignored.

Mr. Renwick: Does the concept appear anywhere else that you know of, or is it new to these two?

Mr. Fram: Not that I know of.

Mr. Renwick: Thank you.

Mr. Breithaupt: Do the various recommendations that were referred to on the grandfathering accommodate the points that have been raised by the organizations so that this is a theme with which both are thoroughly content?

Mr. Fram: I think the thing that will make them content will happen once the Joint Practice Board deals with actual cases. Until that takes place, it is difficult to know who is going to be grandfathered.

I suggest that many of the people who have been concerned about this matter and who have earned their living doing architecture will be grandfathered. There are very few of them, actually. Most of those who will be applying appeared before you. Many of the others will simply hire an architect if they are engineers and continue doing their practice. I think it is more of an emotional issue than a real one.

Mr. Williams: I would like to be clear about whether that is the standard type of wording used in statutes where annual reports are required to be filed. Is that the precise wording?

Mr. Fram: Yes.

Mr. Renwick: Why do we not have the usual 15-day provision? I am not going to worry about it, but we have enough trouble getting reports.

Section 53 agreed to.

On section 54:

Mr. Renwick: It is certainly an awkward way of dealing with these questions, but so be it.

Section 54 agreed to.

Sections 55 to 57, inclusive, agreed to.

Mr. Chairman: Shall the title of the bill carry?

Bill, as amended, ordered to be reported.

The committee adjourned at 3:11 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PROFESSIONAL ENGINEERS ACT

WEDNESDAY, MARCH 7, 1984

Morning sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Grande, T. (Oakwood NDP)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitutions:

Hodgson, W. (York North PC) for Mr. Eves
Williams, J. R. (Oriole PC) for Mr. Gillies

Also taking part:

MacQuarrie, R. W., Parliamentary Assistant to the Attorney General
(Carleton East PC)

Clerk: Arnott, D.

From the Ministry of the Attorney General:

Fram, S. V., Counsel, Policy Development Division
Tucker, S., Legislative Counsel

Witnesses:

From the Association of Professional Engineers of Ontario:
Smith, D., Counsel; with McCarthy and McCarthy
Wardell, A. W., Registrar

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, March 7, 1984

The committee met at 10:09 a.m. in committee room 1.

PROFESSIONAL ENGINEERS ACT

Consideration of Bill 123, An Act to revise the Professional Engineers Act.

Mr. Chairman: Gentlemen, ladies, we are here to deal with Bill 123. Before we start Bill 123, the clerk is passing out a letter from the Interior Designers of Ontario on behalf of the steering committee, and it is addressed to me. It is from Alison Hymas, and basically the letter is self-explanatory.

Mr. Fram: We were right. They were satisfied; they just did not know.

Mr. Chairman: I also have one further exhibit from a Mr. Arvo Vahtra in regard to Bill 123. I will ask the clerk to make copies, enter it as an exhibit and distribute copies to the members of the committee.

We will be dealing with Bill 123 today.

Mr. Renwick: Mr. Chairman, I need a little bit of assistance. I do not believe I have any really significant problems in dealing with the bill clause by clause except in one specific regard, and that is the concerns that were expressed to us at some length in the Ontario Association of Certified Engineering Technicians and Technologists' presentation in relation to the agreement that was signed on behalf of OACETT and by the Canadian Association of Physicists.

Of course, their particular problem is substantially solved. But certainly from the presentation that was made to us on behalf of OACETT, which is basically exhibit 49, as well as the 13-point agreement that was signed on July 20, 1982, obviously there are still very significant problems there. I do not pretend to understand what they are. I need a little bit of a refresher or a briefing before we move into the clause-by-clause part of the bill or I will find that I have passed the appropriate sections without having understood their implications. Is that possible?

Mr. MacQuarrie: Mr. Chairman, after OACETT's presentation the ministry gave careful consideration to how best to allow them to operate within the context of the statute and what sort of amendments would be required to permit it.

The ministry as a result introduced an amendment to paragraph 7(1)33 that in general terms permitted the Association of Professional Engineers of Ontario, subject to prior review by the minister and approval by order in council, to pass a

regulation exempting a class of persons and members of that class from the application of the act in so far as what they call a vertical engineering practice is concerned.

Technicians and technologists are quite frequently extremely specialized in a very narrow part of the professional engineering spectrum. Consequently there is going to be some difficulty in incorporating them into the act.

Our recommendation to them from the ministry--it was substantially the same advice given to the interior designers--was to proceed immediately by way of private legislation to establish themselves as a self-governing body specifying the terms and conditions of membership with the other various powers that a self-governing body would have. It was also indicated to them that the ministry would support this sort of step.

Having done that, we then looked at the clause that was introduced by way of amendment as a means of accommodating their desires. The other thing under which some technologists can attain some recognition, of course, is the limited or restricted licence that is provided for in the act.

That is the ministry's approach, as I understand it, Mr. Fram.

Mr. Fram: Yes, essentially that is correct. The idea, again, is not to have sublicensure for technologists. It is something that would not be desired by technologists and that the APEO would find very difficult to deal with. It does not seem to work.

OACETT intends to proceed with a private bill and I have offered my assistance to them in doing that. The APEO has long stated, as far as technologists are concerned, that they have no objection to finding a way to allow technologists who meet the standards set by OACETT for technologists, which are very high standards, to practise without supervision within a limited area of professional engineering.

The mechanism for doing this has been discussed. John Hood was president of OACETT at one point and discussions were under way at that time. The problem the APEO has always had is with the technician aspect of the matter. The private act would provide for the technologists and the technicians, but it would provide that there would be a segregation--indeed, there is a segregation now in training and experience for technologists--and that some mechanism for the regulation of the practice of vertical engineering would be made at that time.

I believe this is fully satisfactory to OACETT. I had a meeting with John Kieran last week and that approach was a good idea, in their opinion.

Mr. Mitchell: I am just looking at the amendment we have been given with respect to paragraph 7(1)33. I just want to be sure.

In the area where you have the reasons for change you refer to "experience equivalent to a bachelor of technology." Does that include, or can we assume it means, all certified engineering technologists?

Mr. Fram: I was just giving an example, in that we--

Mr. Mitchell: But we can then assume--

Mr. Fram: We can assume we are saying that technologists who meet the standards set by OACETT would also be in that--

Mr. MacQuarrie: I think, Mr. Mitchell, that footnote was put there more for purposes of illustration than for anything else.

Mr. Mitchell: Strictly for illustration.

Mr. Renwick: I think that satisfies me until we get to the appropriate section.

Mr. Chairman: Fine. Before we go on to Bill 123, we received a letter from Gardiner, Roberts, barristers and solicitors, which has to do with Bill 100. They express a concern here, and we have distributed copies to all of the members. Mr. Fram, I am sure, will bring it to the attention of the Attorney General (Mr. McMurtry).

10:20 a.m.

Interjection.

Mr. Chairman: More than likely. Now we will move on to Bill 123.

Mr. Breithaupt: Can we take one other moment, Mr. Chairman, just to look at the general theme raised in the brief submitted by the interior designers? In that brief they refer to Bill 123 in addition to their comments with respect to Bill 122. They suggest in the general scope of the brief that certain complementary amendments may be required in Bill 123.

At the bottom of page 14 of their submission they refer to Bill 122 and then say, "as well as the necessary corresponding changes to Bill 123."

Are certain changes to Bill 123 required?

Mr. Fram: They are incorporated.

Mr. Breithaupt: If they are in place, can we then presume we do not have to refer further to the brief?

Mr. Fram: That is right. There was an ambiguity in that, and I checked it with their counsel to see whether I was right in interpreting it the first time. The bill now incorporates the change to the Professional Engineers Act about which they were talking. It corresponds.

Mr. Breithaupt: So we have nothing further to deal with concerning the Interior Designers of Ontario brief?

Mr. Fram: Nothing further.

Mr. Williams: Mr. Chairman, I do not know whether in the preliminary discussion that has taken place here the concerns of the Canadian Society for Professional Engineers have been raised or not.

Mr. MacQuarrie: Not as yet, no.

Mr. Breithaupt: They have appeared before the committee and they have also, I believe, been seeking certain amendments, which are not put and discussed.

Mr. Williams: Yes. They have been seeking certain amendments, which are not before us in the formal material. I will deal with that when we come to the sections, but I just wanted to know.

Mr. Breithaupt: They have not been accepted as yet, as I understand it.

Mr. Fram: There is one amendment that in part reflects their comments. It has to be recognized that much of the bill reflects earlier comments of theirs that have been incorporated. But section--

Mr. Williams: Subsection 8(1) and paragraph 8(1)19? It was just a double negative, which seemed like a mechanical thing.

Mr. Fram: Oh, that one has not been dealt with.

Mr. Williams: Rather it is something more substantive.

Mr. Fram: Paragraph 8(1)24 has been revised in the light of their comments.

Mr. Williams: All right. Perhaps we can deal with those when we come to them. I just wanted to serve notice that I would like to raise those points.

Mr. MacQuarrie: Mr. Chairman, if I may just draw Mr. Renwick's attention in addition to the regulation exempting a group or class, it is supported also by clause 12(3)(d), which in effect states that, notwithstanding the prohibition that "no person shall engage in the practice of professional engineering or hold himself out as engaging in the practice...unless the person is the holder of a licence, a temporary licence or a limited licence," except that this clause does not apply to prevent a person from doing an act--

Mr. Renwick: Where is that?

Mr. MacQuarrie: Clause 12(3)(d).

Mr. Renwick: Clause 12(3)(d).

Mr. MacQuarrie: It just relates back to the group.

Mr. Chairman: The clerk has just distributed to the members one further amendment to section 14(6), and the committee has it now.

Mr. Williams moves that Bill 123, An Act to revise the Professional Engineers Act, be dealt with as reprinted.

Motion agreed to.

Mr. Chairman: We now move to Bill 123, section 1.

On section 1:

Mr. Breithaupt: Mr. Chairman, in section 1 the only area that appears to have caused any particular concern is clause (m), the definition of "practice of professional engineering."

In the summary of materials that has been prepared for us there are perhaps eight or 10 various comments on this particular item. Perhaps we could hear from Mr. Fram as to how these various views have been sorted out and why clause (m), which is before us, is the best we can get at the present time, if such is the case.

Mr. J. A. Taylor: Mr. Chairman, maybe a motion should be put to delete the old section, and then maybe we could discuss it.

Mr. Fram: It has been.

Mr. J. A. Taylor: Has it been changed? Oh, as reprinted. Sorry. Yes, I see.

Mr. Renwick: Mr. Chairman, before we get to clause (m), simply as a matter of alphabetical order, Dr. Peter Kirkby has raised the question that, as we have excluded practising as a natural scientist from the definition of "practice of professional engineering," it may be advisable to consider a definition of "natural scientist." Without encroaching on the elitism of those who practise in that rarefied world, it may well be possible that there should be such a definition.

I am not in a position to submit an amendment on the question because I do not have the ability to do it. But I would like to ask that a letter Dr. Peter Kirkby transmitted in his personal capacity to Professor Boris Stoicheff, who you recall made the submission, to which the Attorney General acceded, to exclude those practising natural scientists, be circulated to the members of the committee and be specifically referred to the Attorney General and to Mr. Fram for consideration about the question of identifying the areas that we have by our exemption excluded.

Without reading the whole letter, Dr. Kirkby refers to three definitions, which are presumably well known within the world of the natural scientist, and he has tried to study to some extent the questions that would arise in trying to get an acceptable definition. He has done considerable work on it and, as I say, has transmitted his suggestions to Dr. Boris Stoicheff.

I think it merits serious consideration between now and the time the bill is dealt with in committee of the whole House in the assembly, if that should be the course the bill takes. I would therefore ask the clerk, with your agreement and with the agreement of the members of the committee, if he would be good enough to circulate this letter as an exhibit and to see that it is specifically referred to the Attorney General and to Mr. Fram.

Mr. Chairman: Agreed, Mr. Renwick. We will have copies made, and they will be circulated. The point is well made.

Mr. Mitchell: Just by way of supplementary to the question raised by Mr. Renwick--without having seen the letter but having listened to Mr. Renwick's comment about trying to apply a definition in here under clause (m)--do you see this as creating a problem? I would think "natural scientist" covers so many broad fields. Is it not in a sense covered under paragraph 7(1)33 as well, where you talk about "classes of persons" and so on?

Mr. MacQuarrie: They are specifically exempted under the definition.

10:30 a.m.

Mr. Mitchell: I realize they are under clause 1(m). I just see that there is some--I do not know; there may not be. But I am trying to think of the problems associated with trying to put a definition in.

Mr. MacQuarrie: I must confess that I would have somewhat the same difficulties because you have the classical divisions of scientists and then all kinds of subspecies of natural scientists.

Mr. Breithaupt: Is the phrase "natural scientist" referred to anywhere else in the act?

Mr. Fram: No, it is not.

Mr. Breithaupt: So that a definition as a separate item would not be relevant. We would have to expand upon the phrase as part of clause (m) to amplify what those words mean.

Mr. Renwick: We can leave that to those technical geniuses who help to do that kind of proposition, but you are quite correct. I just have a minor comment that until one puts one's mind to a problem, one cannot find out whether or not it is possible or otherwise.

Certainly, efforts have been made by that community to find an acceptable definition and it may be that it is possible. We did not appear to have any great difficulty in bringing under the rubric of professional engineering a very wide and diverse grouping of people in very different applied aspects of each of the natural sciences.

I do not think it should be beyond the wit of man to be able to define what we have exempted. If not, we had better remove the

exemption and deal with it in some other way. To leave a statute ticking around without anybody saying what a natural scientist is, but substantially excluding large numbers of people from this act when we are dealing with the safeguarding of life, health, property and the public welfare, seems to me to be an omission not to be desired.

Mr. Mitchell: I see "natural scientist" as being a very broad term. I see a little bit of a danger when you start trying to identify that. You might wind up, because of a definition, by making that definition more exclusionary than you want it to be. That would be my concern, because of the way things are evolving, the way all the sciences are evolving.

Mr. Breithaupt: We will have to wait until we see an example of the definition as to whether it is practical to do so. I presume all we can do is encourage that consideration if it is thought that the amplification of the term "natural scientist" is required under the definition of the practice of professional engineering.

Mr. MacQuarrie: It is a difficult definition, but possibly some of the keen minds in the legislative drafting section can address the problem.

Mr. Breithaupt: We look forward to the results.

Mr. Mitchell: Are you suggesting that section 1 is being set down then, Mr. Chairman?

Mr. Chairman: No, we are not suggesting that at all.

Mr. MacQuarrie: No. When you think of the more esoteric branches of the sciences now, such as genetic engineering and all the rest of it, you wonder how you would fit them in with some within that definition.

Mr. Chairman: Any further discussion on section 1?

Mr. Renwick: Mr. Breithaupt raised the question of all these comments that have been made.

Mr. Breithaupt: Yes. I would like to hear from Mr. Fram as to what has been accomplished in the rewording of this definition so that the particular groups and individuals who have spoken to this can know just how their views were received.

Mr. Fram: The chemists and the physicists were pleased to have natural scientists excluded. I believe the chemists also suggested restructuring the definition and moving the application of engineering principles closer to the head of the definition. Since that applies only to the potential conflict between natural scientists and professional engineers, it was not advisable given the use of the definition.

The definition is there primarily to give a judge the idea of what professional engineers do if this ever comes up in a case for prosecuting someone for practising professional engineering.

Therefore, we thought it ill-advised to change the list of the kinds of work--to moving it after what was done.

The next in importance--no one suggested that the safeguarding of life, health, property or public welfare as being the reason for a licence should be moved up.

In short, after giving it considerable thought, we were not satisfied that shifting the parts around would make the definition any better than what we have now. No definition of professional engineering is ever going to be adequate. I am not satisfied that this one is. It is a lot better than the one that was there before, but I am not sure it is the ultimate definition.

Section 1, as reprinted, agreed to.

On section 2:

Mr. Renwick: I have only one comment about it. Mr. Gots, who is obviously a member of the association, had a number of comments the theme of which expresses a concern about the care and attention which the association directs to the welfare of the public. That is a fair way of stating the theme of his concerns. Obviously, it reflects a concern that with the development of applied engineering in the world in which we live there are significant threats to the welfare of the public and to the environment.

I do not know what can be done about it. I would hope the association takes note of those concerns. Mr. Gots could be speaking for a relatively large area of the public who would share some of the feelings he has expressed. I do not know how to adapt the objects of the association to compendiously meet his concerns in a legislative way.

10:40 a.m.

Mr. MacQuarrie: With respect to Mr. Gots's submissions and Mr. Renwick's remarks, I would assume that in any professional organization such as this, surely implicit in their obligations are some of the thoughts or suggestions that Mr. Gots has put forward in his submission. In this section an amendment is put forward by the ministry to extend the principal object of the association to provide "in order that the public interest may be served and protected." This was one of the recommendations that came forward in connection with section 2.

The other recommendations Mr. Gots has put forward are very difficult, as Mr. Renwick has suggested, to interpret in a statutory form, but they are implicit in the general professional conduct of a self-governing profession.

Section 2, as reprinted, agreed to.

Mr. Renwick: Oh, dear. I missed one. Damn it all.

Mr. Chairman: Are you still dealing with section 2, Mr. Renwick?

Mr. Renwick: No, I missed it in section 1. Sorry.

On section 3:

Mr. Renwick: Mr. Chairman, without going into the discussion or the comments I made yesterday with respect to the architects, I continue to be concerned with the limitation that those members of the association eligible for election or appointment to council must of necessity be Canadian citizens. I have no concern about the residency in Ontario; I think it is quite supportable. But when we come to the provision that provides for the qualifications for membership, we will find that it is Canadian citizenship, or permanent residence in Canada that is the operative factor.

So I emphasize again that right at the heart of this association you will be creating two separate and distinct classes of members, those who are eligible for election or appointment to council and those who are not so eligible, depending simply on the question of whether or not they are permanent residents in Ontario in the immigration sense of this term, having that status in Canada as permanent residents, or whether or not they are Canadian citizens. I find that offensive, and I hope some day it will be found to be offensive under the charter.

Mr. Fram: I just wish to bring to the committee's attention the Professional Organizations Committee's reasoning and the McRuer reasoning for citizenship as a prerequisite to sitting on a governing body, which is that it is a delegate of the Legislature and, like the Legislature, should meet those qualifications.

Mr. Renwick: With great respect to both the Professional Organizations Committee and former Chief Justice McRuer, for whom I have an extremely high regard, I find that argument specious.

Mr. Chairman: Some may agree and some may disagree.

Mr. Renwick: Fortunately, there is a body that can now decide it when a case goes before it.

Section 3 agreed to.

Sections 4 to 6, inclusive, agreed to.

On section 7:

Mr. Breithaupt: In section 7 there are a number of references to particular items and it might be worthwhile to review the comments on the subheadings, since they are set out for us. Perhaps Mr. Fram can take us through them.

We are referred, first of all, to paragraph 4, "prescribing positions of officers of the association and providing for their election or appointment." A reference saying that should be covered in section 8 of the act was made in one of the presentations. What is your response to that, Mr. Fram?

Mr. Fram: It is a difficult situation for the APEO, which is probably the largest self-governing body in Ontario, to deal with its internal matters. The question is whether the position of officers should be a matter of bylaw subject to approval of the body of professional engineers or whether it should be done by regulation.

The ministry does not have a strong opinion, but it is something that is essentially divisive among engineers. There have been controverted elections and problems the APEO itself wishes to avoid. I understand the provision for election has been worked out to the satisfaction of the members of the association, at least for the time being.

Bylaws are too easily changed perhaps by a group that is interested at a particular time. Any change in future from the regulation that has been agreed upon should be circulated to the members, and indeed this is the practice of the association. Then comments can be received and sent to the Attorney General to avoid any type of change.

Putting it in the regulations will better protect those interests that are concerned about it than leaving it to bylaws, which any group within the professional engineers may take an active role about. They can have a bylaw whipped through, and that again creates divisions within the professional engineers. It is safer for the association and for the ministry administering the statute to have it in the regulations.

10:50 a.m.

Mr. Renwick: I do not know whether this is the appropriate occasion and the appropriate section to deal with the matter, but I have had an opportunity to read the decision His Honour Judge Foster gave on April 13, 1983. This was a summary conviction prosecution. It was appealed and the decision of His Honour Judge Foster was upheld.

The appeal decision, dated October 14, 1983, said there was no merit in the case. The case was Her Majesty the Queen v. The Canadian Society for Professional Engineers. It was brought at the instigation of the Association of Professional Engineers of Ontario to prohibit the Canadian Society for Professional Engineers from using the insignia or designation of P.Eng. It has a broader application, of course.

I found it passing strange that within this organization there would have been an information laid against a companion organization, all of whose members in Ontario were members of the association, in some way trying to discipline that organization about what they were saying in their association, which was not engaged in practising engineering at all but was a voluntary organization.

It as if in my profession the Law Society of Upper Canada were to bring an action against the Ontario section of the Canadian Bar Association because the Canadian Bar Association, Ontario section, said it was an association of lawyers or barristers or something like that.

Mr. Breithaupt: Exclusive use of the word under the Law Society Act.

Mr. Renwick: Yes. It seems to have implications beyond simply the summary conviction case. I find it most unusual that this would have taken place in the first place. It seems to speak to broad divisions and conflicts within the association.

I want to make certain of two things. First, the provisions of paragraph 7(1)15, for example--and I do not pretend to be an expert on this--which talks about "governing the use of names and designations in the practice of professional engineering" and the other broad powers that are here, do not somehow or other allow the enforcement of that kind of nonsense.

Mr. Fram: I agree with you 100 per cent, Mr. Renwick. I think it was a silly thing to have done--and, fortunately, an unusual thing. But paragraph 7(1)15 simply deals with designations by practising members. The real issue comes up in the restriction of the use of names.

Mr. Renwick: Perhaps we can deal with it at that point, and I can repeat what I said to express my professional irritability at that kind of thing.

Mr. Chairman: Again?

Mr. Renwick: Again.

Mr. J. A. Taylor: In paragraph 7(1)6 we have the expression "not inconsistent with." This has been the subject of some debate, and I have no doubt it will be again when we get to the following section. I will just read it:

"6. Respecting matters of practice and procedure before committees required under this act not inconsistent with this act and the Statutory Powers Procedure Act."

Is there some reason we say "not inconsistent with" instead of "consistent with"?

Mr. Fram: I gave this a lot of thought because it was discussed at committee. The term is used very frequently in the statutes of Ontario, and I wondered whether I should try to find an alternative or some other expression with which to replace it, because it was a subject of discussion.

It is probably the best term I could find to describe what it is the person who is deciding on it thinks because, if something is not inconsistent, the test the person is addressing is whether there is a conflict not only in the expressed terms used but also with the intent of some other provision.

Mr. J. A. Taylor: I do not like to interrupt you, but remember that here we are speaking of the power to make regulations. Those regulations are made and put into force simply with prior review by the minister, and they can manifest a wide extension of the act without review by the Legislature.

If what you are saying is that they can do anything that is not inconsistent with the act, that might manifest an extension rather than enable the council to exercise powers that are within the spirit of and contemplated by the act. I understand the difference. That is what troubles me.

Mr. Fram: For example, in the existing Architects Act, which has lasted roughly from 1937 to the present, many things such as domestic matters are going to evolve in engineering and will be dealt with by bylaw. In addition, regulatory requirements transpire as a result of certain things going on in industry that are not only not contemplated by this committee but also not contemplated by engineers in Ontario at all today.

Mr. J. A. Taylor: Yes, but should they not be consistent with the legislation? That is all I am saying. What is wrong with ensuring that regulations are consistent with the legislation? Is there something wrong with that? Are you saying it should be something other than that?

Mr. Breithaupt: It is called shifting the onus.

Mr. Fram: That is right. The difficulty is that if it shifts the onus, does the Association of Professional Engineers of Ontario have to spend its time in court defending a change in its regulations because it may be ultra vires, or should it spend its time and money governing its members and protecting the public?

Once you have shifted the onus, the argument of ultra vires is that you have to prove it is consistent. Is a banking bylaw consistent with the rest of this act, or is it something that has nothing to do with the matters discussed in the act but has to do with domestic affairs consistent with something else?

The most common approach we use is to ask whether there is a conflict of interest. You can tell, and that is what the test of "not inconsistent with" is about. Is there a conflict of interest?

Mr. J. A. Taylor: Your argument fails when you express concern that the association may be unnecessarily spending time and money in court when we have just had an example given by Mr. Renwick of a court proceeding initiated by the association which hardly seemed worth while.

Mr. Fram: I took the opportunity to do a quick search in the Ontario statutes for the use of the terminology.

Mr. Renwick: Can we have a copy of that?

Mr. Fram: Certainly. The phrase is used in the Health Disciplines Act and in the Judicature Act.

Mr. J. A. Taylor: It looks like we have some work cut out for us.

Mr. Fram: It is also used in the Municipality of Metropolitan Toronto Act, where it deals with each of the bylaws. It is used in licensing in the Crown Timber Act, in transportation and--

Mr. Breithaupt: I am glad you asked--

Mr. Fram: --the Woodmen's Lien for Wages Act as well as in the acts governing each of the regional municipalities.

Mr. Breithaupt: The weight of authority is brought down on us.

Mr. J. A. Taylor: Maybe we ought to have a statute covering all those things.

Mr. Renwick: Even Aristotle would say that was an illegitimate argument. Is the world round or flat?

Mr. Chairman: It depends on who you ask. Have you concluded, Mr. Taylor? I think Mr. Renwick had a comment.

11 a.m.

Mr. Renwick: I am sure Mr. Williams will want to get up when we get to section 8, but this is the same point. I know Mr. Fram is in a position to defend the indefensible--and I respect him for it; we have all had to do it on occasion--but the basic question is one of onus. It means if someone challenges a regulation, he has an immediate onus he has to discharge. He cannot just suddenly walk into some court and say, "I think this is inconsistent; now get those guys in here to prove it to me." He has an obligation to discharge before that onus will shift.

I cannot conceive that there is an answer to Mr. Taylor's point. We are talking about the governing body of an organization that is discharging a significant public responsibility. It is an organization that is told in a very real way that it must carry out those responsibilities, yet we allow it to duck that question when it is making up these regulations. It comes in with more force in subsection 8(1). But we have very carefully just passed a section which says: "For the purpose of carrying out its objects the association has the capacity and the powers of a natural person." It is for that purpose.

The objects are an essential ingredient to what we are trying to do and both on the case of these regulations, which basically will originate with the council, and with the bylaw provision in section 8, they should be required to address their attention to whether the bylaws or the regulations are consistent with the act, the regulations and what their obligations are.

I am sorry we missed the point in the Architects Act yesterday, but that is not irremedial if the argument prevails.

Mr. MacQuarrie: Mr. Chairman, I find myself in a rather difficult position here. I should be springing very strongly to Mr. Fram's support. I realize the term "not inconsistent with" appears in a large number of statutes, a number of bylaws and the rest of it.

I know the use of the double negative is grammatically frowned on by some people, including Fowler and the rest, but I

was always under the impression that the double negative really equalled the positive except when I started to look at this question of "not inconsistent with" and "consistent with". I found "not inconsistent with" had a far broader range of application than the words "consistent with." It is a question of whether it is advisable in these circumstances to go with the wider range of application or narrow it down to the scope that the words "consistent with" permit.

Mr. Fram, I think, has put a good argument as to why it should not be narrowed down. Equally, Messrs. Taylor and Renwick have come through with very strong arguments to the contrary.

Mr. Fram: Since it is in large measure a drafting issue, perhaps--

Mr. Breithaupt: After you, Alfonse.

Mr. Renwick: That is a good solution. Why do we not just change it?

Mr. Tucker: Mr. Chairman, it is a question of whether you are going to narrow or widen it. In this particular clause, paragraph 6, we are talking about matters of practice and procedure. If you use the words "consistent with," I am not sure what the consequence is going to be. It encourages challenges to rules regarding practice and procedure in this particular instance, and "not inconsistent with" certainly gives the association a wider range in meeting future problems related to practice and procedure, and that is what the paragraph is intended to do. The way it is written is what was intended.

If you want to restrict the ability of the association to deal with matters of practice and procedure, then you change the language.

Mr. J. A. Taylor: But if you read the entire section, it is very broad. We are dealing only with paragraph 7(1)6--

Mr. Tucker: I understand.

Mr. J. A. Taylor: --which does not detract from the rest of it, and probably a lot of the other items might be considered practice and procedure as well.

Mr. Tucker: Mr. Chairman, the problem really is not with the act; it is with the cross-reference to the Statutory Powers Procedure Act. You could just as easily take out the reference to the act.

The problem simply is that matters of practice and procedure should be not inconsistent with the Statutory Powers Procedure Act; this is all it is saying. There should not be a conflict with the Statutory Powers Procedure Act.

I suppose if the committee is concerned with the language "not inconsistent with," it might try something like, "rules of practice and procedure that do not conflict with the Statutory Powers Procedure Act." That is really all this is saying.

Mr. Williams: I would move that as an amendment to paragraph 7(1)6.

Mr. Renwick: I think that is an improvement here.

Mr. Breithaupt: Could we have that amendment to paragraph 7(1)6 read fully?

Mr. Mitchell: So it would be required under this act--and what?

Mr. Chairman: Mr. Williams, would you read the amendment as you want to make it, please?

Mr. Williams: "Respecting matters of practice and procedure before committees required under this act, and in lieu of"--

Mr. J. A. Taylor: You do not even need that.

Mr. Williams: Oh, yes, you do.

Interjection.

Mr. Williams: It is the second item in this act that you said could be deleted. Now you have got me off track, Jim.

What were the words you used?

Mr. Tucker: Delete the words "not inconsistent with this act and."

Mr. Williams: "Under this act not in conflict with this act and the Statutory Powers Procedure Act."

Mr. Renwick: Perhaps the clerk would read it.

Mr. Chairman: I did not get it; I do not think he did, either.

Mr. Renwick: Perhaps legislative counsel would read it.

Mr. Tucker: I would suggest that the motion be to delete the words "not inconsistent with this act and" in the second and third lines and substitute the words "that do not conflict with."

Mr. Chairman: Mr. Williams moves that paragraph 7(1)6 be amended by deleting the words "not consistent with this act and" in the second and third lines and substituting therefor the words "that do not conflict with."

Motion agreed to.

Mr. Renwick: Could we ask that a similar amendment be put in the one we passed yesterday? It would be ridiculous to go into the assembly with two--

Mr. Chairman: We could recommend that, I am sure.

Mr. Mitchell: That is it again. It is paragraph 7(1)6 of Bill 122.

Mr. Breithaupt: I do not know if we can change it; we have reported that bill back.

Interjection: Yes, we have.

Mr. Chairman: We will have to reopen it.

Mr. J. A. Taylor: We are not changing it, but we are going to recommend to the--

Interjections.

Section 7, as reprinted and amended, agreed to.

Mr. Chairman: Before we move to section 8, I have had the clerk distribute a letter from Stephen Diamond. The letter is basically self-explanatory. He is asking for the possible review of subsection 11(3) before third reading. I think we can recommend that the Attorney General and his staff look at it.

Mr. MacQuarrie: That was on Bill 122.

Mr. Chairman: On Bill 122. I am sorry.

It is a letter from Diamond, Fairbairn, Shapiro and Steinberg, and it is on behalf of the renovators council of the Toronto Home Builders Association.

Mr. Fram: You made that change.

11:10 a.m.

Mr. MacQuarrie: We made the change.

Mr. Chairman: Yes, we made the change.

Mr. MacQuarrie: That is all right.

Mr. Breithaupt: If that is the case, perhaps Mr. Fram could be asked to reply and that would clear the matter up.

Mr. Stevenson: Mr. Chairman, could I ask a question before we move on from section 7?

Mr. Chairman: Yes, Mr. Stevenson.

Mr. Stevenson: We moved rather quickly over a number of paragraphs in section 7. Does the amended paragraph 33 look after the concerns expressed by the technicians and technologists?

Mr. Renwick: We spoke at some length about that particular item yesterday in relation to the same sort of solution by the other body. It will be interesting to see how those two private bills develop and what exactly the regulation says when it is passed with respect to allowing certain acts to be exempt from the application.

Mr. MacQuarrie: And classes of groups.

Mr. Renwick: Yes.

On section 8:

Mr. Williams: Mr. Chairman, I think all the members have been provided with a paper this morning from the Canadian Society of Professional Engineers that synopsizes its main concerns expressed in a more formal and broader-based brief than the society put before the committee during the hearing stage.

As a matter of convenience, I would like to introduce each of the amendments the group has proposed, for the record, so we can have some discussion on these matters. I think they are of sufficient merit to warrant some discussion.

With regard to subsection 8(1), I would like to put an amendment for purposes of discussion by the committee.

Mr. Chairman: Mr. Williams moves that the first part of subsection 1 of section 8 be amended to read as follows:

"The council may pass bylaws relating to the administrative and domestic affairs of the association consistent with this act and the regulations and, without limiting the generality of the foregoing,"

Mr. Williams: In speaking to that motion, I think the arguments were made by Mr. Fram, Mr. Taylor and Mr. Renwick earlier on this other section we have just discussed. Certainly, I have heard the arguments on this issue many times before, as a number of us have. The last fence that legislative counsel puts forward is the fact that this is the continuity that would prevail based on what we have in previous legislation.

Mr. Fram, being forewarned, came forearmed and is prepared to list many statutes that contain that double negative. But I think I share the views of some of the other members of the committee that, while that particular usage may prevail in a very prolific fashion throughout all our legislation, there is no reason it has to be deemed to be cast in stone. If there is some variation that gives greater comfort and clarity to legislation, there is no reason we cannot move in another direction.

For this reason, the concerns that have been expressed by the Canadian Society of Professional Engineers should be given consideration. I think there is merit in moving away from the double negative.

The most immediate further development was what we did a few moments ago with regard to the preceding section in using another clause that may be equally acceptable as an alternative. It was the phrase "that do not conflict with" rather than "consistent with."

If we want to provide consistency throughout the act, since we have taken that initiative in the preceding section, we should

stay with the same verbiage, using "consistent" as a positive rather than "not inconsistent" where there is a double negative.

We could go to the third variation: "that do not conflict with." If it was the feeling of the committee that we should be moving into this new mode, we could resort to this third option as the satisfactory alternative. I would like the member for Prince Edward-Lennox (Mr. J. A. Taylor) to--

Mr. J. A. Taylor: I do not know that the substitution of the expression "not in conflict with" really is appropriate in regard to this particular section. If I am not mistaken, we were discussing the Statutory Powers Procedure Act in the previous section and we were concerned about conflict with that statute.

We are really talking about the council passing bylaws relating to the administration of the domestic affairs of the association. The power to do that should be consistent with this act. To me, this is different from saying, "not in conflict." I guess there is also a negative implication in the word "conflict."

Mr. Breithaupt: I agree with the member for Prince Edward-Lennox's interpretation. I think it would be best to leave that other phrase because it particularly refers to the Statutory Powers Procedure Act. If we wish to remove the double negative, to simply do so--

Mr. Williams: In the form of the amendment I put forward.

Mr. Breithaupt: Yes, we could remove the word "not" and the syllable "in" to attend to what we had in mind, if this is the approach the committee wants and if it seems to be favourable to them.

Mr. Williams: The member for Prince Edward-Lennox touches on a neat point. I can appreciate that in the one instance it refers to other legislation outside the body of this particular bill, while in the other it is dealing with the operating procedures of the act.

Mr. Chairman: Before we go to the member for Riverdale (Mr. Renwick) we should hear from Mr. Fram and our legal counsel. They both have something to say.

Mr. Fram: I have very great difficulties with changing the phrasing to "consistent with" in connection with the bylaws. An annual conference held by an association has a social aspect to it, as all conferences do. Is that "consistent with" this act or not?

11:20 a.m.

On most ordinary domestic affairs, consistency is too high a standard to demand. In terms of the bylaws of an association dealing with many internal matters, it is just impossible to determine when something that is so different and that has no direct connection with the act is consistent.

The association has many important features, such as a conference which brings the profession together, or providing for the dinner on the second day of the conference. To try and determine whether all those minor matters are consistent with the act is just too great a demand to put on any organization. That would be a terrible mistake. In fact, it would end up with all sorts of resources being challenged, and perhaps with bylaws that are ultra vires and of no avail in serving any public interest at all.

I am not sure that "do not conflict" is not a lesser standard than "not inconsistent with." "Conflict" is more of a surface contradiction whereas "inconsistent" is more of a spirit as well as the surface contradiction.

I really believe this would be a terrible mistake.

Mr. Chairman: Thank you, Mr. Fram. We will now hear from legislative counsel.

Mr. Tucker: I want to point out to the committee that the bylaws are really the residual powers between the bylaws and the regulations, and the language "not inconsistent with" makes it clear that the power in the bylaws is wider ranging really than the power in the regulations. I certainly would not recommend the language "do not conflict."

In the previous section, dealing with regulations, I would have preferred to leave it as "not inconsistent with." I only recommended the "do not conflict" because it seemed to trouble the committee.

Here, it is a different situation. You do have the residual power and, as Mr. Fram said, there will be many minor items that will be dealt with and could be challenged. It might very well hamper the activities of the association to change that language.

I strongly recommend that the committee leave the language as it is. It clearly indicates that the residual power is in the bylaws and that the association has the jurisdiction, the authority to deal with its own internal affairs.

Mr. Chairman: Thank you, counsel. Mr. Renwick?

Mr. Renwick: I would certainly want to support the amendment put forward by Mr. Williams and support the distinction which Mr. Taylor and Mr. Breithaupt have made with respect to the amendment which we have passed to the Statutory Powers Procedure Act. I think the words which were passed in that amendment were quite appropriate when we were talking about the Statutory Powers Procedure Act.

I had looked at this matter as a chain of authority, starting from the creation of the body, continuing on with the principal object and the additional objects of the authority granted by the assembly, the assertion that "for the purpose of carrying out its objects the association has the capacity and the powers of a natural person," then the additional power to pass a

lengthy list of regulations which, when passed, would have the force of law, as I understand it, in Ontario. Then, as counsel has said, the residuary capacity of the council to deal with the administrative and domestic affairs of the association.

I am not really impressed with the argument that it would exclude social activities. It certainly would not exclude scholarships, bursaries and prizes because that is one of the specifics they are permitted to pass bylaws about.

Mr. J. A. Taylor: Paragraph 8(1)25 is really a garbage-can paragraph. It says, "regarding such other matters as are entailed in carrying on the business of the association and are not included in section 7."

Mr. Renwick: Yes. So what we have is not only the main object of the association but also the additional objects of the association. We then have 33 heads of regulatory capacity to make laws, which would be laws as I understand it; they would be filed under the act as if they were incorporated in the statute. Then we have 25 further heads of matters which they can deal with, with respect to the administration of their domestic affairs.

If that chain is correct, and the language of subsection 8(1) has a reference to the act and to the regulations, I think we have an obligation to see what they do is consistent with the act and the regulations.

If it raises a problem of a vacuum in what they can do, we should deal with it specifically by making a provision to so provide, but I am not going to be led astray from the principle of the problem that underlies this discussion by whether or not the council can hold an annual dance for the members of the association. That is not the problem.

The problem is that you have an organization to which we are granting significant powers of responsibility in the public welfare, and I do not want the provisions of section 8 to allow the association, when it is so divided within itself and has a history of internal problems as well as a history of jurisdictional problems, to be able to go out on a frolic of its own at the expense and the cost of other members of the association because it is a decision of council. There is no known way to construct the council of this organization so it will reflect adequately all of the concerns.

I am quite content to leave the matter to the discretion of individual members. If there is a breach of subsection 8(1), which I hope will be amended, then it is up to the individual member to take the chance of so saying. But in the history of this organization, it seems to me for the governing body to be charged with the responsibility of saying, when it passes a bylaw, "Is this consistent with the act and the regulations?", that is not an undue burden to put on anybody. If it is, then they do not have to run for the council. It is relatively that simple.

Mr. Fram: The chain Mr. Renwick was speaking of, and the suggestion that the heads are exclusive, I think is wrong. If the

words were changed it would mean that, even within those heads of power, banking would have to be consistent with the other acts of the association, even though they were domestic matters. Because, without limiting the generality of the foregoing, it is now intended, as the bill is before you, to confer greater powers without limiting the generality. However, when you narrow it down to say "may pass bylaws that are consistent with the act and the regulations," those are words of limitation.

All the banking powers, the calling of meetings and so on are limited to being consistent with the rest of the act. It so gels the power to make bylaws to govern the everyday affairs of the association that everything is subject to attack.

11:30 a.m.

You have a self-governing organization of 50,000 members, the largest self-governing body in the province. By passing this legislation, you are conferring on it the function of governing the profession and protecting the public and not giving it the trust that it can handle its domestic matters. When those powers are given to the law society and to all of the health disciplines, it is a very serious thing for you to consider.

We are talking here about domestic matters. I do not know why you are considering taking such a serious action. I wonder what acts they now perform that are so devious, or are so serious an encroachment on what people can do, that you wish to so limit the organization.

I heard the Canadian Society for Professional Engineers brief and asked them about services. I believe what we are really talking about is member services and what member services are now performed by the Association of Professional Engineers of Ontario that should not be performed.

We have heard from the APEO that there is one service which should not be performed, but which they cannot get out of, and that is retirement savings plans created before the 1969 legislation was passed. They cannot ditch them. They do not now provide insurance plans. In terms of the placement of students, we realize it is essential that those who have gone through the public expense of getting the training and education to be engineers must also have a chance to get employment so they can become members of the association.

I have not seen anything else in the bylaws that have been passed in the last 35 or 40 years of the association that would bring that kind of a program to it that you would wish to so limit their bylaw-making power.

If the Ontario Association of Certified Engineering Technicians and Technologists becomes a statutory corporation, its bylaws will say it can pass bylaws not inconsistent with the act. Every business corporation, every corporation--indeed, even a nonprofit organization--can pass bylaws that are not inconsistent with the act or with the objects of the corporation. To tell the professional engineers they cannot, I do not understand why this is happening.

Mr. Renwick: Perhaps I could respond, if I may, to a concern which I have, which I hope addresses the statement that Mr. Fram makes and I hope, in a sense, rebuts it.

There is a provision in paragraph 8(1)19 where we find the strange words "the objects of which are not inconsistent with." It is the authority which we would be granting to pass bylaws related to administrative and domestic affairs of the association which would include the power to have a bylaw "respecting membership of the association in other organizations the objects of which are not inconsistent with and are complementary to those of the association, the payment of annual assessments and provision for representatives at meetings."

I have a list here, which is not exhaustive by any means, and obviously some other people have seen it, which names 20 or 30 organizations. Are we saying to this association, "You can go out and join each and every one of these organizations"? Or are we saying, "You can select the ones you want to join" and impose that obligation and use funds of the association for those purposes by joining certain selected ones? If that is the case, who selects them?

All of the organizations appear to have the word "engineering" in their titles. There is the American Society of Mechanical Engineers, the Engineering Institute of Canada, the Federation of Engineering and Scientific Associations, the Institute of Power Engineers, the Canadian Society for Civil Engineering, the Association of Polish Engineers in Ontario, the Technical Service Council of Canada, etc. It goes on: the Institute of Power Engineers, the International Federation of Medical and Biological Engineering, the International Federation of Professional and Technical Engineers, the Sandford Fleming Foundation, the Society of Photographic Scientists and Engineers.

I do not know what we are saying. Is that a domestic matter? Is it a matter on which no member of the association could raise a question with respect to the propriety of carrying that out? Or is the member going to be limited in an organization as diverse and as divisive as this organization has been in its internal affairs? Are we going to be able to say, "You can always change the council at an annual meeting." Is that the residual situation we are going to provide for a member?

If so, we might as well forget this method of establishing membership associations for self-government purposes.

Mr. Fram: The council is elected by the members. There are lay members appointed by the Lieutenant Governor in Council. We have to assume that the Association of Professional Engineers of Ontario exists in a society. In terms of keeping abreast of what is going on in engineering, both in Ontario and elsewhere, it must be a member; it must be able to participate. This is a world situation in which engineers are competing in society.

To say that a particular member should be able to attack the association in its wisdom or lack of it in joining an organization that may have to do with some work in standards development and

otherwise may have nothing to do with the association but is developing standards in a certain branch in which the association, in developing its own standards, is interested in participating, is something that I think should be left to the council of that association.

I do not believe we should be putting restrictions on which organizations an association belongs to, and I do not see why an association should not join an organization simply because that organization has some implication for a particular member. For example, if he does not like Polish engineers, but Polish engineers are developing a set of standards or rules, why should not the association belong to it?

If the Pope were to set up an international committee to study engineering standards and a group of Orangemen who were engineers did not want the association to belong to that, but it was developing professional engineering standards for the world, I do not see why the council should not be able to decide to do that.

Mr. J. A. Taylor: You are reaching now.

Mr. Fram: We are dealing here with a council that is elected, that includes lay representatives. Either you have confidence in them to govern professional engineering in Ontario or you do not have confidence, in which case you should not be passing a Professional Engineers Act.

Interjection.

Mr. Chairman: Excuse me, Mr. Taylor. Mr. Williams is first and then we will come right back.

11:40 a.m.

Mr. Williams: Somehow in Mr. Renwick's own ingenious way he kind of pulled it forward into the next amendment, which has yet to be tabled, and discussed the subject matter on what I was going to put forward.

Mr. Renwick: Sorry. I did not mean to.

Mr. Williams: I am sure we will go over this again when we come to that next amendment, as I would be proposing.

Coming back to the amendment on the table and subsection 8(1), I think Mr. Fram feels very strongly about this issue; however, I think the more he makes a point of it, he may be losing a bit of ground on it. I do not know. I understand what he is saying, and I respect the concerns that have been expressed.

As I say, it is not the first time this legal debate has gone on as to interpretation of the double negative versus the advantage of the one positive statement. However, I fail to be convinced--let me put it that way--that the intent and purpose of the section would be somehow impaired or diluted by moving from the double negative to the positive.

While it deals with domestic affairs and administrative activities of the council and its membership, I am hard pressed to understand how they could be prejudiced by moving to the consistency aspect of it rather than the inconsistency.

Notwithstanding what the council has expressed in the way of a concern, I really feel no harm will be done and that it does provide a measure of clarity to the legislation that is not currently in the existing wording. I would certainly stand by the amendment as being one that has some merit.

Mr. J. A. Taylor: Apropos of what Mr. Fram and Mr. Renwick said, I want to redirect the committee's attention back to subsection 2(2), which expresses the principal object of the association; that is, "in order that the public interest may be served and protected."

It disturbs me, in terms of the arguments advanced about whether or not you can hold a dance. I think we may be straying in some of our examples from the principal object of the legislation, which is to ensure that the public interest is served and protected. From what I have heard in terms of whether it is a meeting convened by the Pope or by the Society of Ukrainian Engineers and Associates in Canada, I do not think we should lose sight of the principal object.

Mr. Mitchell: I am sitting here somewhat puzzled, Mr. Chairman. Maybe this is an instance where we have too many lawyers on the committee. I am finding a great degree of difficulty following the arguments of "consistent" or "not consistent with."

Frankly, I still do not have an explanation of why it has to be changed from what it is. It seems to me we have spent about an hour arguing this very thing. If someone could give us a simple explanation and get off the business of the Orange Lodge--as I say, I have a feeling maybe the lawyers are creating more confusion here this morning.

Mr. Chairman: Mr. Mitchell, if there were a simple explanation, we would have been through with this a long time ago.

Mr. Mitchell: I wish they would get to the point.

Mr. Chairman: I understand. Mr. Fram, you have a point.

Mr. Fram: I think Mr. Smith, on behalf of the Association of Professional Engineers of Ontario, would like to say something to this matter.

Mr. Chairman: With the agreement of the committee, I certainly agree. Mr. Smith, please. We may get that clarification for you, Mr. Mitchell.

Mr. Mitchell: I am going to listen, believe me.

Mr. Chairman: With the agreement of the committee, I certainly agree. Mr. Smith, please. We may get that clarification for you, Mr. Mitchell.

Mr. Mitchell: I am going to listen, believe me.

Mr. Smith: It is not a simple matter of just changing. It is introductory language. If the rules of the establishment of this act had been that the bylaw-making power of the association had to be consistent, then at the very least we would have addressed the various subject matters that are encompassed within the bylaw-making power.

I would address this to Mr. Renwick. I am putting myself in the position of being counsel to the APEO and being asked down the road whether it has power to pass a bylaw. I look at paragraph 14, "respecting management of the property of the association." The question of the property of the association is not addressed in the act and I have to say that a bylaw is consistent with something that is not referred to. You can go through all these--

Mr. Renwick: Since you addressed me, I thought the point Mr. Taylor made just recently answered that. I am looking at subsection 2(3), the principal object.

Mr. Smith: Yes.

Mr. Renwick: I may have missed something, but that states, and I think it is so important that perhaps we should read it: "The principal object of the association is to regulate the practice of professional engineering and to govern its members, holders of certificates of authorization, holders of temporary licences and holders of limited licences in accordance with this act, the regulations and the bylaws in order that the public interest may be served and protected."

If you, sir, have the power to pass bylaws consistent with the act and the regulations for a purpose "respecting management of the property of the association," I do not see how that poses a legal problem in regard to the point you make. I would be as concerned as you if subsection 2(3) did not contain the word "bylaws."

Mr. Smith: It is circular when you are relying on the object as referring to the bylaws. I still have difficulty in saying something is consistent with respect to property when property is nowhere addressed in the act. How can you make the argument that it is consistent?

Mr. Breithaupt: You can make the argument because it says the council may pass bylaws and "without limiting the generality of the foregoing," paragraph 14, "respecting management of the property of the association." So if we use your example, you have the power to pass bylaws to do that--

Mr. Smith: Consistent with the act dealing with--

Mr. Breithaupt: You have the power to pass bylaws to do that, and it says so in the act.

Mr. Smith: With the greatest respect, the introductory language says we have the power to pass bylaws that are consistent

with the act dealing with property. How do I establish the consistency with the act with regard to property?

Mr. Breithaupt: The consistency of the act comes from the power to pass the bylaws in the first place, which is in the act.

Mr. Smith: I am afraid I am not persuaded by that argument. You are saying because I have power to pass bylaws with regard to property, I can pass any bylaw?

Mr. Breithaupt: The act says so with respect to, to take that item, the management of the property of the association.

Mr. Smith: Regardless of whether it is consistent with the act?

11:50 a.m.

Mr. Renwick: Mr. Chairman, on a point of order: this is the sort of argument we should have over lunch, a drink or something. If you refer to subsection 50(1), I believe that covers it:

"The Corporations Act does not apply in respect of the association except for the following sections of that act which shall apply with necessary modifications in respect of the association:

"8. Section 276 (which relates to the holding of land)."

Now I do not happen to know what section 276 says, but it relates to the holding of land and I take it that would concern the management of the property of the corporation.

Mr. Breithaupt: Although property could be personal.

Mr. Renwick: It is also continued as a corporation without share capital--

Mr. Smith: Mr. Renwick, I appreciate the deficiencies in my argument when I am called upon at the last moment. We have spent some two years in developing a system of bylaws based on a format which has been accepted in the Ontario Legislature for years, and all of a sudden we are going to change one word. If the ground rules had been on that basis, I am sure we could have tried to accommodate the committee in arriving at something that was workable.

I can only support Mr. Fram. Either this association is a self-governing body or the Legislature is going to dictate in which way and in great detail what it may do. If that is the approach that is to be taken to the largest governing body in this province, and possibly the world, that is fine. But we have not addressed the minute details of the internal government of this association so it can be said with confidence in every case they are consistent with each and every other provision of the act.

That is a task, with respect, I think is going to take some considerable length of time.

Mr. Breithaupt: So you are informing us that if you had been faced with this greater particularization, you might well have reconsidered certain words in these 24 specific areas rather than relying on them in general because of the protection of the phrase "not inconsistent with."

Mr. Smith: That is quite correct.

Mr. Fram: I think, unconsciously perhaps, when Mr. Breithaupt was reading the list, he was omitting the words "that may become words of limitation." He was reading it as, "The council may pass bylaws regarding administration and domestic affairs and without limiting the generality of the foregoing."

The words "not inconsistent with this act and the regulations" are intended to remind the association of its objects and of the purpose of the statute, so it may think about conflicts that may arise between what it is doing in terms of its domestic affairs and its obligation to fulfil its object. That is really what they are there for, to remind the association to make sure what it is doing is within the purpose of this act and the regulations and turn that into a narrowing, so each of these has to be determined by a test of consistency.

I think that is a very difficult task for any organization and that is why the words "not inconsistent with" have been used to remind people in all the other statutes. It may be better simply to take out the words "not inconsistent with this act and the regulations," which indeed are implicit, and simply say the association can pass bylaws to deal with administrative and domestic affairs "without limiting the generality of the foregoing" and give a list, or limit them to what is in the list, because that probably would be adequate by itself, and leave out the basket phrase "without limiting the generality of the foregoing."

Putting in the test of consistency would be enough to severely limit and subject every bylaw to potential attack by someone. In that attack, in bringing it to a court on the basis of ultra vires, the onus in every case would be cast on the association to prove there was consistency with each and every provision of the act and the regulations. That is a terrible task.

Mr. Chairman: Thank you, Mr. Fram. Legislative counsel has a comment.

Mr. Tucker: I just wanted to support what Mr. Fram is saying, Mr. Chairman. I think it is a correct principle of statutory interpretation that if the committee took out the words "not inconsistent with this act and the regulations" the act would be interpreted in that manner. If a bylaw is read, it will have to be read against what is in the regulations.

Mr. Breithaupt: It would be interpreted narrowly.

Mr. Tucker: It would be interpreted not necessarily narrowly. What I am saying is that it would be interpreted as though those words were there anyway. Those words are really put in, from a drafting point of view, as a reminder to the association. You get the same effect by simply deleting them.

Mr. MacQuarrie: I have one question of counsel for the association. What other specific powers would the association want in addition to those set out in section 8, where it goes into some detail in listing what sort of bylaws the council may pass? It seems to be really quite an exhaustive list.

Does the council have any bylaws that do not fall within the framework? These are bylaws that are specifically allowed to pass by the legislation.

Mr. Breithaupt: But they have not had to consider this until now.

Mr. MacQuarrie: No, but I just wonder. They certainly have a bylaw prescribing the seal and other insignia. I wonder whether there are any bylaws except in addition to the bylaws that are provided for in the 25 items under section 8. How badly are you being prejudiced by--

Mr. Smith: Mr. MacQuarrie, I think the simple answer is we have put down what we were able to think of. Then we put in a basket clause to cover the ones that are inevitably overlooked. I do not think that at any given point you can ever say with your hand on your heart that you have an exhaustive list. If there is not, hence the rationale for a basket clause is to cover those things that no one even contemplated.

I think we can say we have made a diligent effort at covering the subject matter that we wanted, but we recognize that probably is going to be deficient, based on changing circumstances.

Mr. J. A. Taylor: I have just a comment, Mr. Chairman. Included in section 2 is the subsection stating, "For the purposes of carrying out its objects, the association has the capacity and the powers of a natural person." That must add something as well.

There seems to be an assumption, Mr. Fram, that if the powers are not specifically expressed, they do not exist. I am suggesting they may exist if the association has the powers of a natural person. You have the supplementation of those as well detailed in certain of the sections.

Mr. Tucker: Mr. Chairman, the result you get is that the detailing becomes a limitation.

12 noon

Mr. J. A. Taylor: Then are you suggesting you do not need the powers of a natural person? If it does not add anything, let us take it out.

Mr. Tucker: I am saying it may be the other way around.

You could do away with all the numbered clauses and the power to pass bylaws dealing with domestic and internal matters is sufficient. There are those on the other side of the case who say they have doubts about it and so you get those clauses. The argument goes on until there is a basket clause at the end.

The problem is that everything added becomes a limitation. It is very carefully set out so the limitation is not harmful. What I think Mr. Fram and Mr. Smith are telling you, and I agree with them, is you are imposing a further limitation on the association by changing those lead-in words to the extent the association may find it difficult to operate.

Mr. Mitchell: Mr. Chairman, we have been on this question of consistency or inconsistency or whatever for quite some period of time. I have heard a variety of arguments as to why it should be changed and why it should not be changed, but I suggest the question we now have is with regard to whether we approve the motion. I would move that the question be now put.

Mr. Chairman: Could we just back up for just a second or two? I have a question from the member for Durham York (Mr. Stevenson) and it has been indicated to the chair that the Canadian Society for Professional Engineers would like to make a comment. In the light of the fact we have had one group, it would only be fair to hear what they have to say before we put the question. Would the committee agree to that?

Mr. Breithaupt: Perhaps Mr. Mitchell would just withdraw his matter for the moment since it is otherwise not debatable. We should hear the views of the other side.

Mr. Mitchell: Okay, I am sorry. I just wanted to clarify that.

Mr. Stevenson: I am in a position something like that of the member for Carleton (Mr. Mitchell). Not being of legal background, I find some of these arguments somewhat confusing. I have some sympathy with some of the views that have been expressed by the member for Prince Edward-Lennox (Mr. J. A. Taylor) and others in narrowing the powers of the organization.

In this job as politicians, we have to work with the legal profession so much. Certainly that is one profession that could use some redefinition when it comes to public interest and so on. We can see the effects of a self-governing body that has no competition and is really no threat to its existence.

However, I am really quite concerned that we have spent many years really developing a piece of legislation and a lot of recent meetings and so on and now we are coming to make a change that appears, at least from a sort of layman's approach, to be a fairly significant change. That gives me some concern that we are going to pass this fairly quickly.

Maybe the lawyers understand the full significance of this change and how it relates to other parts of the bill and so on, but it is certainly not all that clear to me. I guess I have some

concern that we are going to walk into something fairly quickly that could have some major effects on the bill and on the actions of this organization. If it is as significant as in my impression it appears to be, I think it may warrant a little harder look than we are giving it right at the moment.

At this point, I have not heard enough reasons for making the change from the way I understand the situation.

Mr. Chairman: I think we should move on to the Canadian Society for Professional Engineers. We will hear from them and then we can decide whether we want to deal with the motion or whether we want to stand it down until this afternoon or whatever the committee desires to do.

Gentlemen, please.

Mr. Akhtar: Mr. Chairman and members of the committee, thank you for giving me this opportunity to speak.

We are impressed by the Legislature's concern, which should be the concern of the Legislature when they are delegating the power, to make sure those powers are for the purpose for which the organization has been created. Otherwise there is no purpose and there is no limit to that.

I want to explain the emphasis on restriction that has been unduly created here. What we are all looking for as members of this organization is direction. It is a matter of policy, therefore, that a sense of direction should be given to the council and to the members, not a restriction. When you use the words "not inconsistent with," they lead to great ambiguity. It causes divisiveness. It does not give a sense of direction. I can appreciate a certain viewpoint that says it places undue restriction. What we are begging for here is direction.

If the words "not inconsistent with" place undue restriction, I submit the committee may consider the use of the words Mr. Fram said, that it will "reflect" the regulations and the act or be "in accordance with" the regulations and the act. You may like to consider these alternatives. They give a sense of direction and at the same time do not place undue restriction, but you are the best judge.

Mr. Williams: I gather you are suggesting another set of words that would be used in place of "not inconsistent with." As I understood your comments, you are suggesting the words, "administrative and domestic affairs of the association, which reflect the objectives of this act and the regulations and, without limiting the generality of the foregoing." Is that what you are saying?

Mr. Akhtar: Or "are in accordance with." Whichever you feel comfortable with.

The main thing I would emphasize is we are all looking for direction. I think when you are giving enormous power, we appreciate that regulatory power and we are happy to accept those

restrictions, because it is a monopolistic power. We are grateful for that and we want to live up to the expectation of carrying out those things. Anyway, it is rated on the sense of direction, not restriction.

Mr. Chairman: With that, I think we have spent a lot of time on Mr. Williams' motion. We have discussed it in depth.

Mr. Stevenson: Could we have some comment on the phrase "in accordance with," or something like that, from Mr. Fram?

Mr. Fram: The difficulty is that, while not intended as a restriction, "in accordance with" or "reflecting" the act are again terms of restriction. If you are dealing with a banking power, how do you reflect or make it in accordance with the rest of the act when these provisions in fact deal with the banking power?

I think "not inconsistent with," which is a formula of general use throughout the statutes of Ontario, is indeed what they want. They do not want the bylaws to conflict with the basic objects of the association. As a triggering mechanism, that is what it is intended to do. It has been used with some success for hundreds of years to do this, and I do not think we can improve on it.

12:10 p.m.

Mr. Tucker: I think Mr. Fram has expressed it fairly well, to say "in accordance with" is a term of restriction. It has the same problems inherent in it as the term "consistent" would. That is what it really is. It is to say "not inconsistent with." It is not simply a failure of grammar. It is a formula. It is a use of language to indicate what is wanted in the interpretation of the legislation. The intention is that be the residual power, that it be wide and that it be limited only to that extent and no further. That is why it is used not only there, but in the other clauses.

As I mentioned, I would have preferred that paragraph 7(1)6 remain as it was. I respect the committee's intentions and its judgement, but if we are simply discussing the use of the words, the formula "not inconsistent with this act and the Statutory Powers Procedure Act" is a more accurate reflection of what should have been in the bill. I do not think any harm has been done by changing the language in that particular case.

In this particular case, either the words "not inconsistent with this act and the regulations" are removed entirely and you rely on statutory interpretation to get the same result, or I suggest the words should remain in as they are because that is exactly what is intended. That is why the language is used so often in other statutes. The intention is to indicate this is where the residual power is. To use other words, "in accordance with," or any other formula is actually a severe restriction.

I do not want to become involved in whether there are various factions within the organization and what their problems

might be. I am simply looking at it from the point of view of a lawyer and a draftsman. The original intent is to give the association all the powers of a natural person, to put some limitations on it, and to divide the authority to govern its affairs between regulations and bylaws. The regulations and bylaws are really the same thing. It is two different words saying the same thing.

The terms are used to distinguish between the two and the main purpose of the distinguishing is so those things that should be carefully looked at are put into the regulations section. Those are the ones government wants to look at before they are passed by the association. The minister wants to have some say in them. Those that are more clearly of a purely internal, domestic nature are left without that control and are called bylaws.

Those are the ones that should be left and always have been left in the past. The theory has always been those should be left to the organization, to the elected council, to run its own internal affairs. To limit them by changing the language may make the scheme inoperative. That is the risk the committee runs.

Mr. Williams: As the one who introduced the amendment, I indicated I wanted to do so for the very purpose of coming to grips with this issue. The changing of a couple of words may seem trite, but it may have a great deal of importance, as has been brought out in the discussion here this morning.

I have made some arguments suggesting that moving away from the double negative to the other would not impair or otherwise prejudice any interested parties who would be governed and controlled by this legislation. On the other hand, I have to concede there are persuasive arguments. Putting aside Mr. Fram's examples, which I think were the best to be used, I think he made a persuasive argument, as did legislative counsel.

I have certainly weighed all the legal arguments. By the same token, I think the concerns that have been expressed about ensuring that the bylaws dealing with administrative and domestic affairs will reflect the objectives of the regulations and the statute will in turn not be impaired by staying with the double negative. I take it that provides an element of flexibility.

The onus aspect of it does concern me, I must admit. By providing that element of flexibility, however, I think it is somewhat imperative that a practical measure of flexibility is retained in the legislation to ensure there will not be a straitjacketing by the narrow definition of provisions within the section.

As I say, while having put the amendment, because I think it needed to be debated fully, I am inclined towards the retention of the double negative. I think it serves a useful purpose.

Mr. J. A. Taylor: Are you withdrawing your motion?

Mr. Williams: No, I am not. I wanted the motion left on the table; I think it should be voted on. But I felt that without

the full debate having taken place, doubts would remain in some people's minds, including some of us here. I feel that a reasoned argument has been made for the double negative. On balance, I think it will make the act work better and will not, as far as I can see, prejudice any interested groups or parties that would be governed by the legislation.

Mr. Breithaupt: Might I ask the chairman if there is a government view or ministry view on this? Mr. Fram has certainly brought forward a variety of arguments. Mr. MacQuarrie, sitting in as parliamentary assistant, is somewhat torn, I presume, between his own views and his responsibility while sitting in as the conductor of the legislation.

I recognize the professional acts brought forward are done through the function of the Attorney General's office, even though they are not, in the traditional sense, government bills with a certain party commitment or a necessity for cracking the whip on occasion.

Is there a considered view or is it our place that this particular theme is to be dealt with by the committee, without benefit of the ministry's direction? I was going to say benefit of clergy, but that perhaps is not the phrase.

Mr. MacQuarrie: If I could express the ministry's view, at the same time holding my own in restraint, it has been fully stated by Mr. Fram in his comments. He mentioned that this was not a government bill in the usual sense. It is really a nonpartisan matter. We are here to get the best piece of legislation applicable to a self-governing profession that we can.

I think in that sense there is no witness, or any of that sort of thing, no specific government direction, but Mr. Fram has literally spent years on this subject matter. He has expressed the ministry's point of view.

12:20 p.m.

Mr. Williams: Mr. Taylor asked me if I wanted to withdraw the motion. As I say, I have now been satisfied. After having listened to all the arguments, I would be prepared to withdraw the motion. Someone else may, in turn, want to retable it. I do not know if others feel that strongly about it.

Mr. J. A. Taylor: If you are withdrawing your motion, then I would move an amendment to delete the words "not inconsistent with this act and the regulations."

Mr. Williams: All right, but just to conclude my remarks, I still will be introducing the other suggested amendments you have before you that also contain this clause--not to debate it again, but to debate the other aspects of the amendment that this clause might also be in.

I will withdraw the amendment I have on this at the moment. It has been thoroughly debated and aired, and Mr. Taylor is coming up with a suggested alternative.

Mr. Chairman: Mr. J. A. Taylor moves that the words "not inconsistent with this act and the regulations" be deleted where they appear in subsection 8(1) so that the subsection would now read, "The council may pass bylaws relating to the administrative and domestic affairs of the association and, without limiting the generality of the foregoing."

Mr. Renwick: I move an amendment to Mr. Taylor's amendment. Rather than go through the gobbledegook of it, the clause would read: "For the purpose of carrying out its objects, the council may pass bylaws relating to the administrative and domestic affairs of the association, including," and then it would carry on.

Mr. Breithaupt: Mr. Chairman, I suggest that this amendment so changes the wording Mr. Taylor has suggested that it might be better to deal with the two of them separately.

Mr. Renwick: I did not intend to. I accept Mr. Taylor's amendment.

Mr. Breithaupt: So that removal of those words would be accepted? Okay. I did not quite hear the way you phrased it.

Mr. Renwick: I wanted to do two other things: add the introductory phrase and delete the phrase "without limiting the generality of the foregoing." I just did not want to get stuck with some rule of practice that says that if the amendment carries, the section carries, or whatever that--

Mr. Breithaupt: No. Usually in the committee stage if one item or a second item is referred to, we have attempted to deal with them thoroughly without--

Mr. Renwick: All right. I am quite happy to separate them. I withdraw my subamendment.

Mr. Chairman: Thank you, Mr. Renwick.

Mr. Renwick: Mr. Taylor's amendment is not inconsistent with the bill.

Mr. Chairman: Is there any further discussion on Mr. Taylor's amendment?

Mr. Breithaupt: Perhaps we could just be certain of this. All this does, then, is to remove the phrase "not inconsistent with this act and the regulations."

Mr. J. A. Taylor: That is right.

Mr. Breithaupt: The result, as I understand it from legislative counsel, will be to leave the meaning of the section exactly as it would be if we left the words in.

Mr. Tucker: That, I believe, is correct, although I must say I would recommend that you not do it.

Mr. J. A. Taylor: We will not debate that. It would make me more comfortable if I had to debate having it out.

Mr. Hodgson: You are not replacing the word "inconsistent" with "consistent"?

Mr. J. A. Taylor: No, we are taking it out.

Mr. Chairman: Does anyone have anything further to add to Mr. Taylor's amendment? Does the committee wish to deal with it?

Mr. Williams: I was initially enamoured of that option, but I really feel the lesser of two evils is to retain the double negative and add some measure of protection to it.

Mr. J. A. Taylor: You have really come around.

Mr. Williams: Yes, I have. It has been a good debate. I really have come around; I must admit it.

Mr. Chairman: Gentlemen, legislative counsel would like to say something before we proceed.

Mr. Tucker: As I mentioned, I feel those words are put in there not because they change the law but because they are a direction to the association in passing its bylaws. They serve a useful function sitting there, and it is for this reason that I said I would recommend that the words be retained rather than removed. I think the legal effect is the same, but the direction to the association is useful.

Mr. Williams: I think that is what the society of professional engineers, in a sense, was looking for.

Mr. Breithaupt: Perhaps Mr. Fram has a comment.

Mr. Fram: I agree with legislative counsel. With respect to keeping the objectives of the Canadian Society for Professional Engineers that bylaws not provide for new services, etc., and a service function to the association, the reminder of those words will be of assistance. Their deletion probably does not have any legal effect but it deletes the reminder, and I think that would be contrary to the purpose of CSPE, which is quite properly to keep the association from member-only services, which are the objective of that association.

Mr. Williams: I think Mr. Fram said it, and I will say it in another way. I really think it does address the concern expressed by the spokesmen for (inaudible). They were concerned about ensuring that the powers being given under this section would reflect the objectives of the regulations and of the association; and while they are not happy with the double negative approach, I think it has been explained away.

Taking this clause out does not ensure that there will be some adherence to the objectives, and there could be a straying afield without anyone being subject to reprimand for doing so. So I think it should remain.

Mr. Renwick: In the light of Mr. Fram's comments and of my concern about what we are doing, I do now want to propose the subamendment.

Mr. Chairman: Mr. Renwick moves that, in addition to deleting the words "not inconsistent with this act and the regulations," the words "for the purpose of carrying out its objects" be inserted at the beginning of the section, so that the section would read:

"For the purpose of carrying out its objects, the council may pass bylaws relating to the administrative and domestic affairs of the association and, without limiting the generality of the foregoing."

Mr. Renwick: If I may speak very briefly to this question, finally, thanks to Mr. Fram, we have put our finger on the real problem, and that is this question of public interest, which the act involves, and members' services, which the act does not involve, or which are at least a very minor part of it.

I do think the words "not inconsistent with this act and the regulations" did not focus attention on that problem but led to the lengthy debate we have had. Since the corporation has very clear objects, and since for the purpose of carrying out its objects it has the capacities and powers of a natural person and, in addition, the powers of a corporation under the Interpretation Act, it is an important qualification to add the words "for the purpose of carrying out its objects" to make certain the council, when it is looking at a bylaw, must direct its attention to the objects of the corporation and to the substantive provisions of section 2 of the bill.

For those reasons I would like to--

Mr. Williams: Mr. Chairman, may we have time over the lunch hour to reflect on these two substantive amendments? Would this not be an appropriate time to break and reflect on these two amendments over the lunch hour, then come back and deal with them?

Mr. Chairman: It is an important issue. It is that time in the afternoon, Mr. Renwick, and we will adjourn until two o'clock and deal with this issue then.

The committee recessed at 12:30 p.m.

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J-42

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

PROFESSIONAL ENGINEERS ACT

WEDNESDAY, MARCH 7, 1984

Afternoon sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: Mitchell, R. C. (Carleton PC)
Breithaupt, J. R. (Kitchener L)
Elston, M. J. (Huron-Bruce L)
Eves, E. L. (Parry Sound PC)
Gillies, P. A. (Brantford PC)
Grande, T. (Oakwood NDP)
MacQuarrie, R. W. (Carleton East PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Taylor, J. A. (Prince Edward-Lennox PC)

Substitutions:

Hodgson, W. (York North PC) for Mr. Eves
Williams, J. R. (Oriole PC) for Mr. Gillies

Also taking part:

MacQuarrie, R. W., Parliamentary Assistant to the Attorney General
(Carleton East PC)

Clerk: Arnott, D.

From the Ministry of the Attorney General:

Fram, S. V., Counsel, Policy Development Division
Tucker, S., Legislative Counsel

Witnesses:

From the Association of Professional Engineers of Ontario:

Smith, D., Counsel; with McCarthy and McCarthy
Wardell, A. W., Registrar

Akhtar, A., Past President and Member, Board of Directors,
Canadian Society for Professional Engineers

ERRATUM:

In Issue J-8, Mr. Akhtar appeared as a witness and his name was misspelled as Aktar.

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, March 7, 1984

The committee resumed at 2:14 p.m. in committee room 1.

PROFESSIONAL ENGINEERS ACT
(continued)

Resuming consideration of Bill 123, An Act to revise the Professional Engineers Act.

Mr.-Chairman: Before going to lunch, we were discussing Mr. Renwick's subamendment. Is there any further discussion on the subamendment?

Mr. Renwick: Mr. Chairman, I understand that during the luncheon recess some progress has been made. I do not know how you want to proceed, but I understand Mr. Fram has a suggestion that he or Mr. Williams might be prepared to put on the table.

Mr.-Williams: Mr. Chairman, that is true, but we have a procedural difficulty in that it appears one of the ways of dealing with some of the fundamental issues under debate here would be to go back to a section that has already been carried. We would have to have the unanimous consent of the committee members to reopen discussion on section 2 of the bill, with some suggested additional clauses to be added.

Agreed to.

On section 2:

Mr. Williams: If the members would turn back to section 2, the proposed additional numbered subsections following the existing ones--this would be under subsection 2(4), I guess. Is that correct, Mr. Fram?

Mr. Fram: It is subsection 2(6).

Mr. Williams: There is subsection 2(4) and numbers 1 to 5.

Mr. Fram: No.

Mr. Williams: I am sorry; there would be subsection 2(6). Right. It is suggested that there be a new subsection 2(6).

Mr.-Chairman: Mr. Williams moves that subsection 2(6) be added to the act, as follows:

"It is not within the power of the association to provide a service for its members that is not related to the carrying on of the object of the association."

Complementary to that, a subsection 2(7) would be added, as follows:

"Subsection 6 does not apply in respect of a service that is provided by the association immediately before the coming into force of this act."

Mr. Breithaupt: I do not know why you would have put it there. You have a list that sets out five objects and then a general statement. Would it not be better to have that general statement as subsection 5 and then renumber the "natural person" phrase as subsection 6? I think it would make a lot more drafting sense.

Mr. Renwick: The "natural person" one should technically come at the end.

Mr. Fram: I defer to my legislative counsel.

Mr. Tucker: Yes, Mr. Chairman. That is a good, practical suggestion. I simply put them as subsections 6 and 7 because it is mechanically more convenient, but logically it does come before the existing subsection 5.

Mr. Chairman: Fine. Then the committee agrees to accept Mr. Breithaupt's proposal. Agreed?

Mr. J. A. Taylor: It is just a matter of a number; that is all.

Mr. Tucker: Mr. Chairman, I would just change those numbers to clauses 4(a) and 4(b); that is all.

Mr. Williams: Subsection 5 becomes subsection 7.

Mr. Renwick: And we insert subsection 6.

Mr. Breithaupt: Why not insert those as subsections 6 and 7 rather than as additions to the list under subsection 4?

Mr. Mitchell: It was suggested that under subsection 4 you have clauses 4(a) and 4(b). Is that correct?

Mr. Williams: No.

Mr. Mitchell: I am going from the legislative counsel.

Mr. Renwick: We are adding a new subsection 5, a new subsection 6 and renumbering subsection 5 as subsection 7.

Mr. Williams: Right.

Mr. Chairman: Agreed. Is there any further discussion on Mr. Williams's motion?

Mr. Williams: No, other than to say this seems to be the simplest and most practical way of addressing a number of the problems the different factions and interest groups have had with

regard to the matter. If that is the most practical way of resolving those problems and bringing about an accord on the matter, then I suggest we seriously consider those amendments.

2:20 p.m.

Mr. Chairman: I am just about ready to call the motion, but I am informed Mr. Smith has a word or two to add before we take the vote.

Mr. Smith: Thank you, Mr. Chairman. There is one aspect not raised this morning that I think is germane to this question; that is, no bylaw under the proposed bill is effective until it is confirmed by the members. In our consideration this morning, that point has not been mentioned.

It is not a question of council merely passing a bylaw and it becoming law. It must be submitted to the membership and confirmed by a majority by a letter ballot.

The proposed change constitutes a statutory prohibition against the association. It does not matter what the wishes of the members are, or the availability of any other body to provide the service. If this amendment is passed, the Association of Professional Engineers of Ontario is unable to perform the service. The Canadian Society for Professional Engineers at the moment is a viable organization, I think.

It seems to me that to shackle the association, even though at the public hearings it announced quite clearly it was not its intention to provide member services, by providing a statutory prohibition to it ever providing another service, based on the assumption there is going to be another vehicle that can provide the service that may be wanted by the members, raises the question of what the meaning of self-government is for a profession.

The only other point I wish to make is that the development of this act has occupied over two years of careful consideration of most provisions by the associations, the architects and the government. It was distributed to the engineering profession, comments were requested and we have had public hearings. We are now proposing to make a very dramatic change in a substantial provision in the course of some very few minutes.

Mr. MacQuarrie: In response to Mr. Smith, I tend to draw a distinction between self-governance and self-serving. The association, as I understand it, is established primarily to govern the profession within the limits of the monopoly given to it; to set standards for entering into practice, for practising and for professional conduct.

The idea of service is something we see in other professional groups, including the one to which you and I belong. The Law Society of Upper Canada exercises the governing and licensing powers, with the local law associations and the Canadian Bar Association providing the service functions. The same goes for the medical profession. The College of Physicians and Surgeons of Ontario is the licensing and governing body and the Ontario

Medical Association is the service agency, if you will, for that profession.

I do not think there is anything in the proposed amendment that adversely affects the self-governing aspect of the APEO.

Mr. Chairman: I think we have spent a lot of time on this problem and we should now deal with the motion. We are all familiar with the situation.

Motion agreed to.

Section 2, as amended and as reprinted, agreed to.

On section 8:

Mr. Chairman: We are back to Mr. Renwick's subamendment.

Mr. Renwick: I will withdraw my subamendment.

Mr. Chairman: Thank you, Mr. Renwick. Mr. Taylor, we are now at your amendment.

Mr. J. A. Taylor: I suppose what my amendment does is restore the present section to the way it has been functioning all along in the existing act. Does it not improve the existing wording? Is there some problem with it?

Mr. Fram: No. You were taking out the words "not inconsistent with the act."

Mr. J. A. Taylor: That is right; also "and the regulations."

Mr. Fram: Right. I think that for consistency between the professional statutes it is better to have the words in than to not have them in.

Mr. J. A. Taylor: I still have trouble with that, because I do not think it improves the section. As I say, we have heard arguments about what has been taking place all these years and how well it has worked, and it was not in the old statute. I think it would be an improvement to leave it as it was.

Mr. Breithaupt: Mr. Chairman, are we to understand that the theme raised by the professional engineers' group with respect to this "not inconsistent" theme has now been effectively resolved because of the other amendment to section 2, or is the desire to still have this preamble reworded to solve one of their interests?

Mr. Williams: I was under the impression that the introduction of those two additional clauses substantially allayed their concerns and left a lot less importance on the syntax and substantially lessened their concerns with regard to the syntax.

Mr. Breithaupt: If their concerns are relieved, then I think it is not as important to leave it the way it is.

Mr. Mitchell: Some of us were here earlier, before the meeting got under way. We recognized that there was some very strong disagreement between the two bodies. There appeared to be, after some discussions, some meeting of minds, that there might be some other way of dealing with the issue rather than removing the phrase "not inconsistent with." It was because of that we requested Mr. Fram to prepare the wording for the amendments to section 2, on the understanding that doing so would resolve those concerns.

Mr. J. A. Taylor: Is that the impression, Mr. Chairman? In other words, the amendment we have just passed would eliminate the need for my motion.

Mr. Chairman: That seems to be the consensus.

Mr. J. A. Taylor: I certainly would not want to be holding out my motion and breach faith if that was the understanding. Is that the impression?

Mr. Chairman: It seems to be the consensus.

Mr. J. A. Taylor: Then I will certainly be forced to withdraw my motion, because it would not be ethical of me to leave it on the floor.

Mr. Chairman: Thank you, Mr. Taylor. Mr. Williams, did I understand earlier that you were going to proceed with another motion on this section?

Mr. Williams: I hear rumblings on the back bench here but, that notwithstanding, yes, I wanted to put another motion.

Another amendment has been put before us by the society and for purposes of discussion, I want to lay it on the table. We have already discussed the double negative provision and so forth, and while it is part of the amendment I am going to put, I do not think we should have to address ourselves to that particular change again.

I will put the suggested amendment before you in its entirety, and we can proceed from there with some discussion as to the merits of same.

2:30 p.m.

Mr. Chairman: Mr. Williams moves that paragraph 8(1)19 be amended to read:

"19. Respecting participation of the association in other organizations the objects of which are consistent with the principal object of the association, the payment of individual assessments on a voluntary basis and provision for representatives at meetings."

Mr. J. A. Taylor: Carried.

Mr. Chairman: Just one moment, Mr. Taylor. There may be some against.

Mr. Renwick: Perhaps Mr. Fram can explain the difference between "not inconsistent" and "consistent."

Mr. Chairman: Once again?

Mr. J. A. Taylor: But only as it relates to this particular new clause.

Mr. Williams: To the best of my knowledge, this is probably the only substantively remaining issue as far as the society is concerned, and it pertains to that part of the amendment dealing with voluntarism in contributing and making payments by way of assessment on a voluntary basis.

Mr. Chairman: We will have some discussion.

Mr. J. A. Taylor: Mr. Chairman, I do not feel I am here as an advocate of the society. I do not know about anybody else, but I am here as an advocate of the public interest.

Mr. Williams: Right.

Mr. J. A. Taylor: That is what has concerned me in connection with a number of these paragraphs. I cannot see why we need that wording in paragraph 19.

We heard this morning from Mr. Renwick, who mentioned a number of professional organizations and associations whose objects may not be inconsistent. I do not know, but it would be my view that this should be struck out.

Mr. Fram: It comes right back down to the essential issue. We have now said as clearly as can be said in legislation that the APEO should not be a service organization creating for its members new services that are detached from the objects of the act. I think how it deals with which organizations to govern its members and to perform its statutory functions should be left to the organization.

It cannot join an organization that is not complementary to it and is inconsistent with its objects, and that is probably intended to mean it cannot support any political party. The rest of the organizations it joins obviously will be debated by council and will have to do with the function of carrying out its statutory obligations.

To restrict where it can participate in doing its function without some very strong or compelling reasons to do so, I think, is very detrimental.

Mr. Chairman: Is there anything further on Mr. Williams's motion?

Mr. Renwick: I just want to ask a question.

Mr. Chairman: Excuse me. Mr. Smith, you had a comment you would like to make?

Mr. Smith: Yes.

Mr. Chairman: Please. Then, Mr. Renwick, you can ask yours.

Mr. Smith: Mr. Chairman, with respect to Mr. Williams's amendment, where he states that it must be "consistent with the principal object of the association," by definition there can be no other body that has something that is consistent with the principal object of this association, because it is government of engineers of Ontario, and we are given a monopoly in that right.

It is just a trap. If you do not want the association to join any organization, then say so; to my mind, that is exactly what you are saying, because the objects of another association cannot be consistent with the principal object of this association. We are given a monopoly in that area.

Mr. Chairman: Are there any comments on Mr. Smith's comments?

Mr. Renwick: I tend to accept Mr. Smith's interpretation but I would like to ask Mr. Smith a question about the clause as it appears in the bill. Will you tell me how it operates when it speaks about payment of annual assessments? Does the association join another organization as a constituent member, and does it then have some power to levy assessments on its own individual members?

Mr. Breithaupt: Or use its general funds to pay certain--

Mr. Renwick: I can understand it perhaps using its general funds to pay an annual assessment from the other organization, but is there an element of requiring individual assessments on your members?

Mr. Smith: The model against which those words were drafted was the Canadian Council of Professional Engineers. The closest analogy I can give you is the Federation of Law Societies of Canada. Being a provincial organization, it has set up an umbrella organization which is national and which is belonged to by the provincial governing bodies. A fee is paid to the national body based on membership in each of the provincial bodies; so Ontario would make a grant to the CCPE of so many dollars based on its membership.

Mr. Renwick: I see. Let me paraphrase that to see if I understand it. This association belongs to the umbrella organization. The only members of the umbrella organization are other associations.

Mr. Smith: The provincial governing bodies.

Mr. Renwick: The assessment that is made is based on the membership capacity of the various organizations.

Mr. Smith: That is correct.

Mr. Renwick: As Mr. Breithaupt says, that money is paid out of the general funds of the association--

Mr. Smith: Yes.

Mr. Renwick: --and in a sense is obviously reflected back into the individual fees.

Mr. Smith: That is right, Ontario being the largest.

Mr. Renwick: Can you tell us how many such organizations the association now belongs to?

Mr. Wardell: That is the only one.

Mr. Renwick: That is the only one at this time?

Mr. Chairman: Excuse me, would you please come to the microphone so we can have this recorded?

Mr. Wardell: I am Mr. Wardell, registrar of the APEO.

The only outside organization APEO belongs to is the Canadian Council of Professional Engineers, the national body. Its major function is the Canadian Accreditation Board, by which we judge the academic standards for entrance into our profession. This Canadian Accreditation Board determination is used by all the provincial licensing bodies.

All the provincial bodies do not have quite the same objects, other than that they are the regulatory bodies for the profession in Canada. We have to be a little careful here because the objects of the Canadian Council of Professional Engineers, whose main thrust is accreditation, may vary slightly from our own objects because of the fact that there is a spread from Newfoundland to British Columbia in their approach to some factors.

Mr. MacQuarrie: The ministry is in agreement with Mr. Smith's comments with respect to this clause. It seems to give a certain amount of necessary flexibility.

Mr. Chairman: Is there any further discussion on Mr. Williams' motion by any of the members?

Motion negatived.

2:40 p.m.

Mr. Chairman: Are there any further subsections of section 8 that the members would like to discuss?

Mr. Williams: There is just one further thing, Mr. Chairman. I draw your attention to paragraph 8(1)21.

Mr. Chairman: Mr. Williams moves, by way of amendment, that paragraph 8(1)21 read:

"21. Authorizing the making of grants to advance knowledge

of professional engineering education or maintain or improve the standards of practice in professional engineering or support and encourage public information and interest in the role of the association."

Mr. Fram: If the motion is accepted, in essence it would prevent the association from, for example, making a grant to someone who was publishing a document of significant contributions of the past to engineering in Ontario and such motherhood matters as that.

In essence, there would be no one to make such grants. the law society, for example, can make a grant along with others to publish a book on courthouses in municipal buildings in Ontario. But if this motion is accepted, a similar publication could not be made by the Association of Professional Engineers of Ontario, and I think that would be a sad thing.

Mr. Mitchell: In fact, the proposed amendment seems to completely alter what is in paragraph 8(1)21. If I read what I think is the operative part of the paragraph, it says, "encourage public information and interest in the past and present role of professional engineering in society."

What this amendment says is that they are going to encourage public information and interest in the role of the association. It strikes me that you are really narrowing down the situation. Would it not be in the best interests of all if the public were well educated and understood what is the present role of every engineer, which is really what is being said in paragraph 21?

Mr. Williams: I must concede that I think what the amendment has proposed is more restrictive, and I think your interpretation is fair, Mr. Mitchell.

Motion negatived.

Mr. Chairman: Is there any other subsection we should deal with in section 8?

Mr. Renwick: I have another question, and this is a straight question of information. If you will notice, paragraph 8(1)23 says, "respecting the establishment and operation and use of publications of the association." Then we have this special provision in section 9, which says, "The council shall establish and designate an official publication of the association."

I do not quite understand what the difference is, or why there is a need for the two, or why it is done that way.

Mr. Fram: I do not know whether I can answer adequately. Dimensions, which is the official publication of the organization now, will contain such information as bylaws that will be voted on and discussions of matters relating to the association.

In terms of other publications, I believe those things could be related to professional standards and documents of that nature which are designed for more permanent form than passing out in the

Dimensions--reminders to the association or a listing, for example, of those people who have been de-engineered by the discipline committee, just as we send out our little monthly synopsis from the law society of friends and people we knew who are no longer with the law society. It is that kind of publication, which is apart from the official publication of the law society.

Mr. Renwick: I belong to the Royal Canadian Legion, which puts out a monthly magazine. Presumably that is the official publication of the Royal Canadian Legion. It takes a view of the world; it has editorials, advertising and articles of one kind or another. As a voluntary organization, that is what it has.

This, however, is not a voluntary organization. I have had occasion to look at what I believe to be this official publication. Belonging as I do to a pure profession, I was surprised to find Dewar's Scotch whisky was being advertised on the back page. There were a number of other such items in it.

I would be a little concerned if I were suddenly to find the Ontario Reports, published by the Law Society of Upper Canada, in a glossy cover with a Dewar's Scotch whisky advertisement on the back. The only ads we appear to have, as I recall, are for Butterworths and other law publishers of one kind or another somewhere within the world.

Certainly we do not have any editorial comment coming out from the law society taking a view of the world that would be seen in that sense. I do not quite know where the discussion falls in connection with this. I am not certain, and I stand to be corrected by the registrar, but I have a sense that the APEO took a view of the world with respect to the restraint legislation, for example, to which my party was violently opposed. That led me into some interest in this topic.

I am trying to get the point clarified. When you have an official publication, what is it and what is it supposed to do? If I wait until section 9, I could have the answer to that then, but there seems to be some overlap between paragraph 8(1)23 and section 9.

Mr. Chairman: Mr. Wardell seems to be ready to give you the answer now.

Mr. Wardell: I would like to expand on what Steve Fram had to say. We have 20-odd small publications in the form of pamphlets we distribute to our members, to clients and to professional engineers. They deal with such things as rules of advertising, the use of the professional engineers' seal and the liability of an engineer in the use of the seal.

We have a document that has been quoted many a time by your provincial government, which deals with the inspection of arenas. We developed this after a collapse a good number of years ago. That is the type of thing we publish. We do not publish other magazines.

Mr. Renwick: Which is the official one?

Mr. Wardell: The official magazine is known as Dimensions.

Mr. Renwick: Is this the one that has liquor ads in it?

2:50 p.m.

Mr. Wardell: It may have, sir. Yes. We attempted several years ago to recover some of our costs by running ads in it.

Mr. Renwick: Does Dimensions carry editorials, stating the view of the world generally?

Mr. Wardell: It does, indeed. It also has an insert known as the gazette, not in every issue, where we publish our decisions of disciplinary cases and other matters of legal and professional concerns.

Mr. Renwick: Do you have an editor and an editorial policy for that official publication?

Mr. Wardell: Yes, we do. We also publish a series of performance standards and guidelines for our members, which are widely used.

Mr. Breithaupt: Does the official publication, Dimensions, pay for itself through the advertising opportunities?

Mr. Wardell: No, it falls far short of that. I would not say "far short." It has been dropping off. We were hoping it would be self-supporting, but I think in the last year or year and a half, due to the economic conditions, advertising has dropped off.

The chairman of what we call the editorial board committee is in the room today: Mr. Nick Monsour, our vice-president. If you wanted any more details on Dimension, I think he could answer them.

Mr. Breithaupt: It might seem--although this, no doubt, is a responsibility for the council--that a glossy publication, if I could refer to it as that, might well be available on a subscription basis, but that the function--and indeed the duty--of the association would be to publish the gazette as required, as you have phrased it.

I suppose it is a responsibility of your own board if you intend to get into a money-losing proposition, as is how you decide to spend the funds that come forward from membership and otherwise. It seems to be differentiated from the formality of a professional responsibility such as the duties of the association, compared with almost a service kind of function which you happen to have gotten into.

It may be your responsibility solely to decide that, but I think it is at least interesting to observe the differences, one portion of which, the gazette, is without question most appropriate and required, but I presume the other is, and

obviously has been, open to some question, particularly from the approach taken by the other organization.

Mr. Mitchell: I have some appreciation for what is being suggested in the way of the amendment. I believe it came from--

Mr. Chairman: Excuse me, we are no longer on the amendment; we are just talking on general questions to Mr.--

Mr. Mitchell: I am sorry. I thought--

Mr. Chairman: No, Mr. Renwick brought up the point on paragraph 8(1)23.

Mr. Mitchell: I am sorry. He was leading to--

Mr. Chairman: We just wanted a point of clarification.

Mr. Mitchell: --the comments put with regard to the publication, and when we reach that point then I will raise my comments. I thought we had started section 9.

Mr. Chairman: No, we asked for a clarification of paragraph 8(1)23.

Mr. Renwick: I am quite happy to defer my comments to section 9 and carry on if you wish. I just raised it because I did not understand the need for the two clauses.

Mr. Chairman: That is fine. Is there anything further on section 8? If not, shall--

Mr. Breithaupt: Do not rush this.

Mr. Chairman: No, I would not be rushing it, certainly not.

Mr. Renwick: I take it that on paragraph 8(1)24 those are existing services--if you can call them services--which are performed by the association at this time?

Mr. Fram: That is correct.

Mr. Chairman: Are there any further questions on section 8? Mr. Breithaupt?

Mr. Breithaupt: I think not.

Section 8, as reprinted, agreed to.

On section 9:

Mr. Williams: Mr. Chairman, I guess this is really, in effect, a continuation of the previous discussion, but perhaps more appropriately discussed under this section.

On the face of it this appears to be rather innocuous and straightforward, but the concern has been raised, as was initiated

by Mr. Renwick, whether the publication serves the purpose in every respect. Some concerns have been expressed as to whether or not the supplementary publications in the form of the gazette that deals more with internal matters--the discipline of members and so forth--should be officially recognized in the body of the statute. That, I guess, is really what is at issue.

Some have suggested that, for this reason, section 9 should be broadened and a specific reference should be made to the council's having the authority to establish a gazette of the association to communicate its proceedings in disciplinary actions and other matters covered in the act.

In listening to Mr. Wardell's comments it was not clear to me, but I thought from what he said that supplementary inserts of this nature are fairly commonplace in dealing with the publication of their official journal, so it is something that is carried out in practice, even if it is not codified as such in the legislation. I just wanted to be clear about whether it should be pursued further to the point of suggesting that this section should be broadened and that aspect of their publication activities for their membership should be so codified.

Mr. Breithaupt: I do not really think the section is being broadened; indeed, the result of the amendment would be to particularize what the routine publication should contain, compared with its being an insert into a periodical magazine that is now being carried on at some cost to the APEO. I do not know what the dollars are that are involved, and presumably it is the responsibility of the council to decide how they would use their funds.

On the other hand, the function of an organization like this, one would think, would be to, in the words of that well-known detective, "Just give us the facts, ma'am," and save opinions for some sort of voluntary publication that is available by subscription to those who might benefit from its views.

Mr. Mitchell: My difficulty is that people have been referring to an amendment, and I do not believe any amendment has been placed.

Mr. Chairman: No, we are just discussing.

Mr. Mitchell: If they are referring to the amendment we have been handed for consideration, what bothers me about it is that the one amendment I have in front of me says, "the council may establish." It strikes me that you then are really not serving the best interests of the profession.

I do not disagree with the content that is being suggested to be in it. But if this is the wording of the amendment that might be tabled or could be tabled, then I would have some difficulty supporting it, first, because of the entrance of the word "may" and, second, if I may just--

Mr. Breithaupt: Would you prefer the word "shall"?

Mr. Mitchell: I think what we are saying in the existing bill is that the council shall have an official publication. This would say "may," and that becomes very permissive.

The other problem I have with it is that when they refer to communicating its proceedings and disciplinary actions and other matters covered in the act, I feel that even with the best of intentions, those people who would suggest this type of motion might in the long term be limiting themselves to a degree that they may not wish.

I do not disagree with some of the comments that have been made as to why it should be narrow, but it reminds me of the situation when we were talking about the natural sciences this morning and the way things are evolving in that area. Should an amendment such as this be entertained, they might just be limiting themselves with respect to other things they might want to do but cannot once this is written in here.

Mr. Williams: The thought I was putting forward, and it was not in the form of an amendment, was something that would be supplementary to the existing wording. This would be in effect an addendum, rather than a replacement problem, so that the main publication activity as represented by the official organ would not be impugned or in any way detracted from. It would rather ensure that this additional type of publication that would have some importance within the profession would be assured of being a supplement to the main, official document of the association.

Mr. Chairman: Mr. Renwick, will you be returning?

Mr. Renwick: I was just going to ask a question. My basic sense is that if one were starting over and could establish for all time a clear difference between a voluntary organization which has certain opportunities available to it and a mandatory organization in the sense that you have to belong to it to practice a certain profession in the province, I would have some difficulty with the public interest part of the body publishing a magazine which has editorial content in it as their official paper. But I do not live in that particular world.

I think my concerns were basically allayed by the amendment to section 2 of the bill, which we passed earlier. I think that we will have to leave it within the purview of the council as to how they distinguish between the private interest of the members and the public interest to be served.

I take it that this official publication which contains an insert related to what we could call official gazette matters goes automatically to each member of the association as part of his membership fees, is not available for public subscription or sale outside and that, in the give and take of the professional world, presumably letters to the editor are published if someone disagrees and so on.

If we had not solved the other problem, I think I would have

continued to be concerned with this. We should pass the section as it is stated here, as has been the tradition within the association, and leave the problems to be dealt with under the amendment we passed to section 2.

Mr. MacQuarrie: What is the official publication? Is it Dimensions, or the gazette that is an insert to it?

Mr. Renwick: It is Dimensions.

Mr. J. A. Taylor: Mr. McInroy, of the Canadian Society for Professional Engineers has indicated that a representative of that body would like to say a few words. With your agreement we will have him speak.

Mr. Chairman: Agreed.

Mr. Akhtar: As we all know, publications, editorials and journalism are most powerful tools in one way or another. We do not want to bring in the public, but the media have been used against one group by other groups. We can keep the integrity of the profession by keeping to the facts.

If the membership desires to have the journal then it should, as Mr. Breithaupt has suggested, be by voluntary subscription. The fees that have been collected on a mandatory basis may be used by one group against another group, and we do not have recourse. That is the one thing we would like you to consider.

With all respect to Mr. Mitchell, there is no restriction by this amendment. The gazette can still contain all the facts, proceedings and hearings that pertain to the council proceedings or the disciplinary actions. That is what members and the public need to know. They do not need to know whether we should have a nuclear war tomorrow, whether we should promote one political candidate over another or have wage restraints, all these things. That is my submission.

This will again give a sense of direction to the staff and the council. It gives them clear direction to resist any group of members approaching them saying, "I want to publish this article." The staff cannot refuse that. If tomorrow the president, council or some member goes to the staff saying, "We want to have this particular action," this will be a constant, fluid conflict, a divisive thing. Yet, it is not serving the public, the members, the council or the organization.

Therefore, we submit the proper way is, as with any other profession, to publish the gazette on a monthly basis without subscription. If our members want to have anything additional, then let it be by subscription.

Mr. Mitchell: At the beginning of my comments, I said I was not against the idea you were talking about. Because of a couple of things in your submission, however, I could not live with it.

You do not object to the magazine per se or to the fact there is an official publication, but you say that official publication should deal strictly with engineering matters, to use the broad term, and not get into editorial comment. It is the editorial comment that concerns you.

Mr. Akhtar: It has happened in the past.

Mr. Williams: For the record, someone raised the question of which document is the official journal and which is a supplementary. For the record, Dimensions is the name of the publication and it is the official journal of the Association of Professional Engineers of Ontario. The gazette is described as being a supplement to Engineering Dimensions produced by the department of legal and professional affairs of the association. That is so there is no misunderstanding of which document is official.

3:10 p.m.

May I comment further on the issue before us? It is my understanding that many of the professional journals published by different groups, while in substance they relate their subject matter to issues directly related to the profession and the way they carry on, contain articles that may go beyond the sphere of the profession per se and go into more general matters.

For instance, take C A Magazine and C G A Magazine, the chartered accountants' and certified general accountants' official publications. Each magazine has a section on provincial affairs and covers very closely what is happening at Queen's Park, and may have a section on federal affairs too.

These magazines provide a service to their members in talking about what is happening in the political arena. They may be on issues that do not pertain directly to their profession, but there may be--in fact, I am sure there is--some indirect interest. They provide a form of service to their profession, even though they might be discussing matters beyond immediate concern to the profession. I am not troubled by that.

I appreciate what is being said. The main thrust of the publication has to be and must continue to be concerned with matters of immediate interest to the profession. But I see nothing wrong with broadening that basis, as has been the tendency of many publications of these professional organizations to date. They touch on matters a little further afield. It is good to assist members of the profession not to be so parochial in their outlook. There may be issues they should be taking an interest in, such as the general interests of the community at large.

I do not think I concur totally with the point of view that is being put, that it should be confined only to professional matters. It can serve a useful purpose in dealing with some broader issues of the day.

Mr. J. A. Taylor: On a point of clarification: Section 9 simply mandates an official publication. Is it stated anywhere

what the function of that publication is? Or should there be something more than simply that you have to have an official publication? Maybe that is what Mr. Williams had in mind. I do not know.

I was a little confused, which is not unusual, when it was mentioned that there was a gazette and a magazine called Dimensions, and then you talk about editorializing and selected advertising. I was wondering if it might not be of some benefit to specify what the function of an official publication is.

Mr. Tucker: One function of it is to report decisions of the discipline committee. Subsection 29(5) requires publication of the results of proceedings.

Mr. J. A. Taylor: I gather there is a reason for it. The submission from the Canadian Society for Professional Engineers indicates what they see is the reason for it. I was wondering if it would not be of some assistance in reading that section to have some hint of what the reason for the official publication is, just so there is no confusion; that it is not to advertise whisky or to advertise Jim Renwick's campaign or--

Mr. Renwick: That would be going too far.

Mr. Mitchell: It is a question for which I do not even have an idea of the answer. Maybe some of these people learned in law can answer this. What happens if you direct someone that he must have an official publication and then try by legislative means to limit what is in it? Where are you sitting with regard to freedom of the press? I do not know whether freedom of the press applies here.

Mr. Fram: It is a great question. I do not know the answer to that myself.

Mr. J. A. Taylor: Maybe we do not have to answer that, but I would think it would be helpful if we could indicate a minimum of purpose for the public.

Mr. MacQuarrie: The publication really should be consistent with the objects of the association. The objects of the association are set out in section 2.

Mr. Mitchell: Are you suggesting section 9 should be reworded to read, "the council shall establish and designate an official publication of the association"?

Mr. MacQuarrie: All I said was that any publication put out should be consistent with the objects of the body charged with its publication.

We had articles from an old Ontario digest on engineering--something or other--the story of a professional engineer actively involved in the political world. They gave him quite a glowing writeup. I do not think that sort of thing is really consistent with the objects of the association as such.

The Ontario Medical Association's journal has a whole series of jokes on the back of it, but I do not see anything coming out of the Royal College of Physicians and Surgeons of Canada with a pile of jokes.

Mr. Williams: The journal has an editorial opinion. They comment on matters that go beyond the medical profession per se, beyond medical matters.

Mr. MacQuarrie: I was just drawing the distinction between a publication of the Ontario Medical Association and a publication of the governing body.

Mr. Renwick: Mr. Akhtar, I take it from what you have been saying that you feel there has been a degree of misuse of the official publication of the association. I am not making a value judgement as to whether it is or is not, but I take it that is your concern about it.

Mr. Akhtar: It appears to be the concern of a lot of members. We have letters on the record. There was a libel suit. Again, it was staff--

Mr. Breithaupt: And expense.

Mr. Akhtar: And expense. To minimize that is just one (inaudible). Either you say the gazette or you say regarding the intent of the act. That is all that is required.

Mr. Renwick: There are two possible roads. One is to simply have an official form of communication with respect to statutory and other matters in the association and so on.

I have talked with representatives of the Canadian Society for Professional Engineers, as a number of us have. As a matter of fact, this gestation period went on and on for years about the matter. I certainly inclined to that view for quite some time. Then I began to think I was locked into my own profession. If such an organ as this were published by the Law Society of Upper Canada, some people would throw up their hands in horror.

It may well be there is a lot to be said for having an organ of communication for the membership of these kinds of bodies--it may be the policy or what is said may not be pleasing to everybody in the organization--as a method of stimulating interest and discussion, particularly in a society that is even more divided amongst itself than the law society. God knows, hidden underneath the fact that we do not have an official publication of the law society, there is a lot of dissension there.

3:20 p.m.

I am inclined to think the association has got to take its chances; I do not think we can solve all of these problems by legislation. I certainly feel very good about the amendment we passed earlier, which has a sense of confining it to membership concerns. I think a question of adequate editorial policy and then the give and take of communication within any vital organization

should see this official publication of some kind of positive use rather than of negative use, and I think it would be unwise for us to limit in some way it to such a readable document as, say, the Ontario Gazette, which we all read every week.

Mr. Akhtar: Mr. Chairman, just a final comment. If Mr. Renwick is so concerned and would like to have that, let it be on a subscription basis. For people who want to indulge in and benefit from those communications, cross-references and discussion, let it be voluntary.

The concern is, Mr. Renwick, that if there is a mandatory fee, if there is mandatory membership, you cannot opt out of it. Once the damage is done, the damage is done; you cannot go back. I do not want to give a lecture, but the Legislature is giving the power, and you want to be careful that this power is for the common good, and not so the individual, who is helpless, can be victimized.

Mr. J. A. Taylor: It is not a power as much as a duty. As I read this section, there is a mandate on the part of the profession to publish an official publication. There is a duty that has to be discharged, and I think it is necessary in a self-policing organization; I think it is essential to have that.

Mr. Renwick is asking, where are you going to draw the line with respect to what that duty is, and how far are they going to expand that magazine with ancillary material? I think we are getting into another area of controlling what goes into a publication, I suppose, and censorship. I do not want to get into that aspect of it.

My only suggestion was that there might be some hint as to what type of thing must be in it in discharging that duty. That was my only concern.

Mr. Williams: Surely the membership at large is going to ensure that the publication is positive and serves the profession; and, as I said earlier, we should not have to codify and set down the ground rules under which they publish.

I think it is overexercising our powers to have to tell them how they should publish their own professional journal. They are mature enough to know how to satisfy the needs of their profession, and we should not have to spell it out in legislation. If they are not following the general principles and what is in the best interests of the profession, their membership at large will soon let them know.

Mr. Chairman: Is there anything further on section 9 by any of the members? If not, thank you, Mr. Akhtar.

Do you have a comment, Mr. MacQuarrie?

Mr. MacQuarrie: The only comment I have is that since an obligation is placed on the council to establish and designate an official publication, I think it is implicit that it comply with the objects of the association.

Mr. J. A. Taylor: In that are you suggesting that something be tacked on the end?

Mr. MacQuarrie: No. It is just a general observation that there is an implicit suggestion in all of this that whatever the council does should be done in conformity with the objects of the association.

Section 9 agreed to.

Sections 10 and 11 agreed to.

On section 12:

Mr. Breithaupt: There were some comments by Mr. Hollingsworth from the Soo Mill that would appear to relate to this particular 600-square-metre problem, but I thought we had accommodated that so we could have a multiple-use building that was still within that size and did not require the engineering circumstance. Yes, that is clause 4(a), or in effect clause 4(b), which was the point he had raised; so it would seem that is attended to.

Mr. MacQuarrie: With respect to subsection 12(3), I see that tool and die makers are still in it and exempt from the requirements of the act. There are other trades related to engineering. As a member of the committee, I know I mentioned instrument makers. Apparently, judging from some of the people in my constituency working at the National Research Council, machine tool builders and those sorts of tradesmen are hard to find and have to be brought in from overseas to some extent.

I thought this was going to be looked at during the discussion by the association and Mr. Fram.

Mr. Chairman: Could you give us an explanation, Mr. Fram?

Mr. Fram: My difficulty was in coming to a satisfactory definition in my own mind. There are all sorts of things that are instruments. I think I know what Mr. MacQuarrie is talking about, but I am not sure the word "instrument" cannot apply to things that really do need engineering input. That is why I did not do anything with that.

Mr. MacQuarrie: A couple of engineers working at the National Research Council raised it with me.

Mr. Hodgson: Could we revert back to subsection 1? What is a temporary licence or a limited licence as far as an engineer is concerned? Can somebody explain that to me?

Mr. Fram: A temporary licence is for a foreign professional engineer coming to Ontario for a temporary time to do a job. A limited licence is for a technologist or anyone else who develops a specialization in a particular area of professional engineering. He can come to the association and get a limited licence to practice in that specialized area without having to become a member of the Association of Professional Engineers of Ontario.

Mr. Breithaupt: That limited licence is an ongoing opportunity.

Mr. Fram: That is right.

Mr. Chairman: Now, could you move to Mr. MacQuarrie's question?

3:30 p.m.

Mr. MacQuarrie: I am not raising it by way of amendment. I just raised it as a general inquiry and Mr. Fram has answered it. It might be that some of the specialists in a very unique field, particularly in some of the technological lines, could either qualify for a limited licence or go in under the technologists' exemptions that will likely be coming, assuming they qualify. This is the thing.

Mr. Fram: In addition, if there is an area of instrument-making that is a problem, there is clause (e) that would allow those acts to be exempted totally from the act. If there is a problem and we can get a handle on what it is, we can exempt by regulation.

Section 12, as reprinted, agreed to.

Section 13 agreed to.

On section 14:

Mr. Renwick: Without repeating the comment unduly, I want to point out that clause 14(1)(a) provides two classes of members for the association. Those persons who meet all the requirements, who happen not to be citizens of Canada but are permanent residents of Canada, are denied participation in the election of the governing council of the body to which they belong.

Mr. Mitchell: Mr. Chairman, there are two amendments that are required to be made to section 14. They were handed to us this morning. If it is in order, I will read them.

Mr. MacQuarrie: I have one question. The first line of section 14 talks about issuing a licence to a natural person. We just made the association have all the capacities of a natural person. What is the difference between a person and a natural person?

Mr. Fram: A natural person is a human being. A person includes both a corporation and a human being.

Mr. Renwick: Where is the robot?

Mr. Fram: We do not have a classification for that yet.

When it says it shall have the capacities of a natural person, it means it has all the abilities to enter into agreements and so forth that a human being has.

Mr. Chairman: Mr. Mitchell moves that subsection 14(5) of the bill, as reprinted, be amended by adding after "committee" in the first line "shall receive written representations from an applicant but."

Mr. Renwick: That is the same change that was made in the other bill, as I recall.

Motion agreed to.

Mr. Chairman: Mr. Mitchell moves that subsection 14(6) of the bill, as reprinted, be amended by adding at the end thereof "and if the applicant is rejected, the notice shall detail the specific requirements that the applicant must meet."

Mr. Renwick: We had a lengthy discussion on these points yesterday in thrashing out these amendments in the Architects Act and I do not think we need to repeat that. I do think it poses an interesting legal question for Mr. Smith in due course as to whether the amendment we made with respect to the matters of practice and procedure before committees not being in conflict with the Statutory Powers Procedure Act is met by this provision. I guess we will have to await that event.

Motion agreed to.

Section 14, as reprinted and amended, agreed to.

Section 15, as reprinted, agreed to.

Section 16 agreed to.

On section 17:

Mr. Breithaupt: Mr. Chairman, under section 17, Dr. Peter Kirkby made several suggestions. The first was we should clearly state that scientists are free to supervise technologists and technicians.

The second was the act should not imply that scientists need to be supervised by engineers in tasks where the public interest is not at stake.

Could I hear from Mr. Fram as to how those two concerns were considered? Were there any practical changes that might result to clarify Dr. Kirkby's concerns?

Mr. Fram: I think both of them are met by excluding the practice of an actual scientist from the ambit of this act, as long as it is the practice of a natural scientist.

Section 17 agreed to.

Sections 18 and 19, as reprinted, agreed to.

Mr. Breithaupt: Mr. Chairman, there are no other recommendations for consideration between sections 20 and 32.

Perhaps we could deal with them as a group if no one else has a particular comment on those sections.

Mr. Chairman: That is a tremendous suggestion.

Mr. Breithaupt moves that sections 20 to 31, inclusive, carry, as reprinted, where appropriate.

Mr. Renwick: Mr. Chairman, I do not have any objection to doing that. We dealt at some length yesterday with comparable provisions in the Architect's Act. I am satisfied with the motion.

Mr. Breithaupt: That is my reason for making it as well, Mr. Chairman. These themes, the variety of committees and their details are the same as in the other act. I think the principles and general discussion of the component parts have been pretty thoroughly canvassed.

3:40 p.m.

Mr. Chairman: All those in favour of Mr. Breithaupt's motion?

Motion agreed to.

Sections 20 to 32, inclusive, agreed to.

Section 33, as reprinted, agreed to.

On section 34:

Mr. MacQuarrie: Mr. Quinn has communicated with many of us raising some concerns about the potential for an arbitrary exercise of power in this section. I wondered if the committee is going to discuss that.

Mr. Breithaupt: Yes, I was prepared to at least place the amendment and then we could discuss it, if that is what you wanted.

Mr. J. A. Taylor: That was discussed yesterday, was it not? There was a statement that there was some review of all of these provisions in the various pieces of legislation, in the light of the charter, with a view to making them consistent among themselves while not inconsistent with the charter, which I thought we might be doing in connection with that phrase, "not inconsistent with."

Mr. Renwick: My understanding of it is that this does appear a number of places elsewhere in the statute. God forbid that I should be arguing that.

At luncheon today I happened to run into the counsel for the Dow Chemical Co., who had taken on, as one of his major responsibilities, a compilation of every statute of Ontario which has a power of entry in it. He has produced that. I sent it on to the Attorney General (Mr. McMurtry). The Attorney General distributed it to every ministry in the government.

I do not know what part the counsel for Dow Chemical played in it, but it was a masterful piece of work. The idea was to try and get these things all into one place and have standard procedural questions with respect to the right of entry.

From what Mr. Fram said yesterday, I thought that was reasonably well advanced and might well see the light of day very soon. Is that correct?

Mr. Fram: I think it is the intention of the ministry to bring that forward during this year. It is going on right at the present time, a section-by-section review, with a view to bringing in an amendment to the Statutes Act that would make sense out of the very many different forms of entry rights that now pertain and make it consistent with the protection afforded by the charter.

Mr. Chairman: Would that satisfy you, Mr. Breithaupt?

Mr. Breithaupt: If that is the case, then perhaps we could resolve it by asking Mr. Fram, again in his spare time, or if the chairman would wish, the clerk on behalf of the committee, to write to Mr. Quinn and thank him for the proposal for section 34.

At the same time, we could advise him that since this whole area is being consolidated, his views as to the wording of proposed sections are certainly most appreciated, and that in the meantime, for at least the current consistency of dealing with the problems, we propose to keep section 34 as it has been developed, knowing it is likely to have to be changed to fall in with the general overview that is, I hope, going to be before us within some months.

Mr. Chairman: Thank you, Mr. Breithaupt. I believe the clerk has agreed to that undertaking and it shall be done.

Section 34, as reprinted, agreed to.

Section 35 agreed to.

On section 36:

Mr. Breithaupt: Is the new wording in subsections 2 and 3 with respect to insurance claims a result of the recommendations that were made? If that is the case, have those recommendations now been addressed as the provision of information is delineated in the new subsections?

Mr. Fram: I have spoken to the Insurance Bureau of Canada, which made a presentation here. It is satisfied with the provision--at least the person to whom I spoke was--and I have spoken to the Consulting Engineers of Ontario, which group is satisfied.

Section 36, as reprinted, agreed to.

Mr. Breithaupt: Mr. Chairman, it would appear there are

no recommendations before us to be considered before section 46. Unless there are comments to be made in these areas that somewhat parallel what we did with the architects, I would be prepared to move their carriage, unless there are some other comments.

Mr. Chairman: Mr. Breithaupt moves that sections 37 to 45, inclusive, as reprinted and amended, be carried.

Mr. Renwick: I do not necessarily have a problem with the motion. There are just two items that perhaps Mr. Fram would comment on briefly, and then the motion could be put.

Mr. Breithaupt: Oh, yes. Sure.

On section 39:

Mr. Renwick: I had intended yesterday to ask the question with respect to the confidentiality question in section 39. It appears obvious to me that the person would be compellable in a criminal prosecution with respect to these matters, so that is not a problem. I am talking about subsection 2, where the note is "Testimony in civil action." I presume the person would be a compellable witness in a criminal matter.

I also assume he would be a compellable witness in a commission of inquiry. Would that be so, or not?

Mr. Fram: I do not know the answer to that question.

Mr. Renwick: I do not want to tarry over it, but I would appreciate it if you would make a note on that section and the correlative section in the Architects Act, because the commission, as such, is really the only body we have of an investigative nature. I do not know the answer to the value judgement about whether it should or should not be, but it does appear to me that the matter should be looked at and I would appreciate it if you would look at that question.

Mr. Breithaupt: It might be useful, if such evidence is compellable under the Public Inquiries Act, to include a reference to that effect as a reminder, although I realize we do not want to clutter one statute with unnecessary references to what is clearly in another.

Mr. Renwick: I do not know whether or not the Public Inquiries Act purports to override other statutes.

Mr. Fram: We will take a look at it.

Mr. Renwick: Would you? All right.

3:50 p.m.

On section 41:

Mr. Renwick: The other question is, this morning, when I raised this question of the strange case of Her Majesty against the Canadian Society for Professional Engineers on the instigation

of the association, you stated that perhaps it was appropriate to comment on it under this unlawful use of the name section, section 41.

Has there been any change in this which would obviate that kind of hassle reflected in that case, almost to the point of harassment in a sense?

Mr. Fram: The term "occupational or business designation" was added in subsection 41(2) with a view to not having a repetition of that title as an occupational or business designation. It came up as well in a very interesting letter I received from Mr. Peng--

Mr. Breithaupt: Was it in a plain envelope?

Mr. Fram: --who happens to be an architect. He was concerned that many members of his family would no longer be able to use their family name. I hastened to assure him on behalf of the minister that would not be the case.

Mr. Renwick: I am very glad.

Mr. Breithaupt: There was no one named Arch.

Mr. Chairman: Mr. Smith indicated he wanted to make a comment.

Mr. Smith: As to this action Mr. Renwick has characterized as being, I think, frivolous on occasion, perhaps I might set the record straight.

Mr. Renwick: I did not say frivolous. I said it could be characterized as harassment.

Mr. Smith: I knew there was some pejorative there.

The current act arrogates to the professional engineer exclusive jurisdiction over the abbreviation PEng. If I can go back, the name Canadian Society for Professional Engineers was agreed to by the APEO at the time it assisted in setting up that organization. The society commenced to use the abbreviation PEng on its official seal.

It was the opinion of my firm that by allowing this use it might have a contrary effect on similar enforcement proceedings under the act. It was not harassment. It was the first time we had an association using PEng.

The development from this is in the present bill where we say it must be used in the context of an occupational or business undertaking to dissociate it from the use by an association for purely recognition purposes. That was the background of the action.

You characterized it as harassment. We thought we were just defending our rights at the time.

Mr. Renwick: I appreciate your explanation, sir, and I would not accuse you of harassment.

Mr. J. A. Taylor: As long as Mr. Peng did not punctuate his name he would be all right.

Mr. Fram: Peter Eng might be in trouble.

Mr. Chairman: Have you anything further, Mr. Renwick, or were those the two points you wanted to make?

Mr. Renwick: I think that answers my question.

Mr. Grande: Who was the one who called it silly this morning?

Mr. Chairman: That was this morning. We will now return to Mr. Breithaupt's motion. All those in favour of Mr. Breithaupt's motion?

Motion agreed to.

Sections 37 to 45, inclusive, as reprinted and amended, agreed to.

Section 46 agreed to.

Section 47, as reprinted, agreed to.

Mr. Renwick: I am just saying I do not know how you keep us on our schedule so well.

Mr. MacQuarrie: Okay. Now Mr. Renwick is going to move the next block.

On section 48:

Mr. Breithaupt: Presumably, Mr. Chairman, the Joint Practice Board as a new kind of project is going to have to have some experience before we will see how it works. However, a number of recommendations have been made by the chief executive officer and others as to improvements and changes in the framework.

Could Mr. Fram advise us if those matters have now been sorted out by the changes to subsections 3 and 4?

Mr. Fram: I believe the change to subsection 3 is the key one. It was the request of the Consulting Engineers of Ontario, and quite a reasonable request, I believe. I must have believed it, because it is an amendment.

In the circumstance that one of the councils, either the APEO or the OAA, does not accept the recommendation of the Joint Practice Board, it is required under subsection 3 to give its reasons for rejecting the recommendation in writing to the Joint Practice Board and to the applicant. That was the request, and it was a very reasonable request.

As I have suggested, I do not think we will ever see the provision actually employed, but it is a reasonable one to be there, anyway. They should have a reason before they go to war.

Section 48, as reprinted, agreed to.

On section 49:

Mr. Renwick: Section 49 is interesting. I wonder what the minister is going to require the council to put in its annual report.

Mr. Fram: It has been making an annual report for many years now. I guess it will continue to do the same old thing.

Mr. Renwick: But what will the minister require them to do? Just the same thing?

Mr. Breithaupt: Changes if he does not like it, I suppose.

Mr. Fram: Changes if he does not like it.

Mr. Renwick: "Containing such information as the minister requires."

Mr. Fram: Yes.

Mr. Renwick: I would assume they do not need to publish one if the minister does not require something.

Mr. Renwick: That is frivolous.

Mr. Chairman: No comment.

Section 49 agreed to.

Sections 50 and 51 agreed to.

On section 52:

Mr. Renwick: When is it anticipated? Is it anticipated in July or on January 1?

Mr. Fram: I think it will be about six months before the regulations are in order.

Mr. Renwick: But probably not later than the first of next year.

Mr. Fram: Oh, I would think by the end of the summer, anyway--maybe earlier.

Interjection: Right after the next election, probably.

Section 52 agreed to.

Section 53 agreed to.

Title of the bill agreed to.

Bill, as amended, ordered to be reported.

Mr. Chairman: Gentlemen, that brings us to the conclusion.

Mr. Renwick: Mr. Chairman, I think we should thank Mr. Fram for his years of--

Mr. Chairman: I was just going to do that.

Mr. Renwick: Oh, were you? Fine.

Mr. Chairman: First of all, before everyone leaves, I would certainly like to thank the Canadian Society for Professional Engineers for being here with us, as well as the Association of Professional Engineers of Ontario. We took a little time on one of the sections and we might have been here all day except for your clarification to help the members. We thank you again for taking the time to be here with us.

On behalf of all of us on the committee, Mr. Fram, it has been nice being here with you. I know you have enjoyed it.

Mr. Breithaupt: Take the rest of the day off.

Mr. Chairman: Yes. Now you have other problems with the regulations, but good luck anyway.

I think before we leave the committee should talk about tomorrow morning. We might like to return for an hour or so tomorrow to deal with the trust matter, so we can give our researcher some guidance on how we would like the report framed.

With that, gentlemen, thank you very much.

The committee adjourned at 4 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
ORGANIZATION

THURSDAY, APRIL 5, 1984

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: MacQuarrie, R. W. (Carleton East PC)
Breithaupt, J. R. (Kitchener L)
Cureatz, S. L., (Durham East PC)
Elston, M. J. (Huron-Bruce L)
Eves, E. L. (Parry Sound PC)
Mitchell, R. C. (Carleton PC)
Renwick, J. A. (Riverdale NDP)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Swart, M. L. (Welland-Thorold NDP)
Williams, J. R. (Oriole PC)

Substitution:

Piché, R. L. (Cochrane North PC) for Mr. MacQuarrie

Clerk: Carrozza, F.

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, April 5, 1984

The committee met at 4:02 p.m. in room 151.

ORGANIZATION

Clerk of the Committee: I call this meeting to order. I am your new clerk, by the way.

Mr. Elston: Has there been a coup?

Clerk of the Committee: No, just a change.

Gentlemen, I must inform you that you must elect a new chairman. Are there any nominations?

Mr. Williams: Yes, I would like to move for nomination as chairman the name of Al Kolyn.

Clerk of the Committee: Thank you. Are there any other nominations?

Then the chairman is elected. Mr. Kolyn, would you please take the chair?

Interjections.

Mr. Chairman: Thank you, gentlemen. I hope this is the first of a series of elections to various positions. Thank you for your confidence.

I think one of the other things we should do is to vote for a new vice-chairman. Are there any nominations from the floor?

Mr. Williams: Mr. Chairman, I move that Mr. MacQuarrie's name be put forward in nomination as vice-chairman.

Mr. Chairman: Are there any further nominations?

Mr. Elston: He is absent. Is he available?

Mr. Piché: I am subbing for him and he has indicated to me that he would be pleased to accept this very important position.

Mr. Chairman: All those in favour?

Against, if any?

It is Mr. MacQuarrie.

We need a motion now to have our proceedings transcribed.

Mr. Williams: So moved.

Mr. Chairman: Thank you, Mr. Williams.

Motion agreed to.

Mr. Chairman: I would just like to take a few minutes, because I know some of the committee members have other obligations.

I have received from our researchers the draft copy of the white paper and I would like to know when you gentlemen would like to deal with it. We could deal with it either tomorrow or next Wednesday, whatever the committee would like to do.

Mr. Renwick: Is that the only item on our agenda at the moment?

Mr. Chairman: Yes, Mr. Renwick.

Mr. Breithaupt: I would suggest we begin on Wednesday at 10 o'clock.

Mr. Renwick: I thought it would be nice to have a free Wednesday if there was one still available. Could we not deal with it tomorrow and Thursday?

Mr. Swart: A man says that who has been away for two weeks.

Mr. Chairman: You had a few free Wednesdays, Mr. Renwick.

Mr. Breithaupt: Unfortunately, I cannot be here tomorrow, not that that need bother the committee.

Mr. Chairman: All right, on Wednesday of next week we will start with the white paper.

Mr. Breithaupt: At 10 o'clock.

Mr. Chairman: It will be in camera, I presume. We will be discussing it privately, is that right?

Mr. Breithaupt: Yes. I am wondering how much progress we expect to make. Would it perhaps be better to start at nine on Wednesday, April 11, with the hope that we could--

Mr. Renwick: Get finished at 10?

Mr. Breithaupt: No.

Mr. Chairman: Twelve-thirty?

Mr. Breithaupt: We may be able to complete it a little more readily in two sessions if we have an extra hour. If, however, you feel it is going to take extra time anyway, perhaps it is not required.

Mr. Chairman: We know Mr. Renwick is a speed-reader, but I do not know about myself.

Mr. Breithaupt: All right, we will start at 10.

Mr. Williams: You may recall, the last time we met in camera to discuss the white paper, in the deliberations of the committee it happened that there seemed to be an irregularity in that we were transcribing what was deemed to be a discussion in camera, as I recall. I just raise that as a point, that it was inconsistent with our normal practice that when we are putting a report together we would not be transcribing. I presume that pattern would be followed and we would not have transcriptions.

Mr. Chairman: The clerk informs me that being in camera, we will have no transcription facilities here.

The committee adjourned at 4:06 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

EXTRA-PROVINCIAL CORPORATIONS ACT

THURSDAY, APRIL 26, 1984

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)

VICE-CHAIRMAN: MacQuarrie, R. W. (Carleton East PC)

Boudria, D. (Prescott-Russell L)

Breithaupt, J. R. (Kitchener L)

Cureatz, S. L., (Durham East PC)

Eves, E. L. (Parry Sound PC)

Mitchell, R. C. (Carleton PC)

Renwick, J. A. (Riverdale NDP)

Spensieri, M. A. (Yorkview L)

Stevenson, K. R. (Durham-York PC)

Swart, M. L. (Welland-Thorold NDP)

Williams, J. R. (Orioie PC)

Substitutions:

Cassidy, M. (Ottawa Centre NDP) for Mr. Renwick

Hodgson, W. (York North PC) for Mr. Stevenson

McClellan, R. A. (Bellwoods NDP) for Mr. Swart

Newman, B. (Windsor-Walkerville L) for Mr. Elston

Clerk: Carrozza, F.

Staff: Yurkow, R., Legislative Counsel

From the Ministry of Consumer and Commercial Relations:

Barrows, J. C., Senior Solicitor, Companies Branch

Wells, E. J. K., Director, Companies Branch

Witnesses:

Latrémouille, C., Secretary, Plaza 100 Tenants' Association

Robinson, L., Staff Director, Federation of Metro Tenants'
Associations

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, April 26, 1984

The committee met at 3:32 p.m. in room 151.

EXTRA-PROVINCIAL CORPORATIONS ACT

Consideration of Bill 5, An Act in respect of
Extra-Provincial Corporations.

Mr. Chairman: There is a reference dated April 17, 1984, which is Bill 5. Prior to dealing with it clause by clause, we will be hearing from a few witnesses, the first of the witnesses being Mr. Claude Latrémouille, secretary to Plaza 100 Tenants' Association.

Mr. Latrémouille, if you have a prepared statement, we are willing to hear you.

Mr. Latrémouille: I do not have one.

Mr. Chairman: That is fine. You may proceed at your convenience.

Mr. Latrémouille: I am the secretary of a tenants' association called Plaza 100 Tenants' Association. Our presence here today is due to the fact that some elements of Bill 5 have a direct effect on our situation before the courts, before the Residential Tenancy Commission and maybe before other bodies, judicial or quasijudicial, which we may have to encounter in our long battle for the protection of the rights of our tenants.

The situation is very complicated. I would like to beg the indulgence of the members of the committee to introduce other participants, because it is a complex relationship involving many corporations, both foreign and Ontario corporations, so that the committee may be able to understand why we are in the situation we are in today and why Bill 5 may further complicate our situation. That is the reason we are present here this afternoon.

Basically, we are dealing with two Liberian corporations, or corporations incorporated under the laws of the Republic of Liberia, and with three or four Ontario corporations. The two Liberian corporations are called Cadogan Investment Ltd. and Deerhurst Investment Ltd. Those two corporations, to my knowledge--up to April 18 at least, and I checked this afternoon with the registry at 555 Yonge--have not obtained what is called an extraprovincial licence under part VIII of the Corporations Act of the Revised Statutes of Ontario.

In spite of the fact that Deerhurst Investment Ltd. had never obtained such a licence, it proceeded to ask an Ontario corporation called 481076 Ontario Inc. to buy, on its behalf, a

residential complex situate at 100 Wellesley Street East--that is at the corner of Jarvis and Wellesley, near here--from Cadillac Fairview Corp. Ltd.

That corporation, 481076 Ontario Inc., upon signing an agreement for purchase and sale, assigned its interest in the purchase to Deerhurst Investment Ltd., the Liberian corporation I mentioned before; so that by the closing date, which was October 1, 1982, Deerhurst thought it became the owner of the residential complex.

There are two more corporations involved in this transaction: Fairwin Investments Ltd., an Ontario corporation, and Tse's Investments Ltd., another Ontario corporation. Both companies have the same head office as 481076 Ontario Inc. Tse's has two directors, Jack Tse and Andrea Tse, respectively its president and secretary. Fairwin's first director was Laurence Charles Caroe, and its sole director since August 13, 1981, is Jack Tse, who is also its president and secretary.

The significance of this information is that when the transaction closed, Tse's Investments Ltd. got the commission for the transaction, although it was acting as an agent for the purchaser; Mr. Caroe got his \$10,000, of course--lawyers do not work for nothing--and Fairwin Investments Ltd., due to a contract entered into between Fairwin and Deerhurst, became the property manager of the residential complex.

As of October 1, 1982, you have an Ontario corporation acting on behalf of Deerhurst Investment Ltd., which does not have a licence to carry on business in Ontario and which does not have an extraprovincial licence, and Fairwin and other companies are acting on behalf of Deerhurst with impunity. Nobody charged them with contravening the existing Corporations Act.

The ministry has been informed of that situation and so far, to my knowledge, has not laid any charges, and yet many persons, both physical and moral, are acting on behalf of those Liberian corporations with impunity. No charges have been laid, it is against the existing Corporations Act, and we are caught in between the activities of those corporations before the Residential Tenancy Commission and other courts and trying to protect ourselves in spite of the complexity of the relationships between those corporations.

To complicate things further, when last year the government introduced Bill 103, which was a predecessor to the present bill, Bill 5, we realized that the few advantages which the present Corporations Act gave us were to be taken away under the new proposed bill, and we tried to make sure some amendments were made to the bill so that our position would not be worsened due to the passage of the bill.

3:40 p.m.

Some improvements were made in the bill that was tabled this year, Bill 5, but there are still some areas of the bill that, in our opinion, should be modified, so our position will be, not

improved, but at least kept as it is under the present Corporations Act.

I would like to review, if possible, the different areas of the present act that are of concern to us and the different areas of the proposed bill that are also of concern to us, so the committee may assess why we are concerned about the present bill. I also want to suggest amendments that may be needed to keep us in the same position we are in at the moment. We are not asking for more rights than we have at the moment. We are asking to keep the few we have.

The first section of the Corporations Act that has a direct consequence on our situation as tenants is section 346, which grants power to hold land to those extraprovincial corporations that have a licence under part VIII. These powers are described as follows in the section:

"Every extraprovincial corporation having a licence...has power...to acquire by purchase, lease or otherwise, to hold, to mortgage, to sell, to alienate and to convey any land or interest therein in Ontario," etc.

The present bill has modified this wording, and we are concerned the modification may take away some of the rights we think we have under section 346. Maybe we are wrong. Maybe the proposed bill does not take away any rights. Since it is less precise than the present act, we would like the committee either to assure us that even though it may be less precise, it means exactly the same thing, or, if the committee sees no objection to keeping the words we have in section 346, to put them back in Bill 5, so at least we are sure we are not losing any rights in the transition from the Corporations Act to Bill 5.

Another area of concern is subsection 349(1), which deals with the prohibition of some actions.

"So long as an extraprovincial corporation within class 11...is unlicensed, it is not capable of maintaining any action or other proceeding in any court in Ontario in respect of any contract made in whole or in part in Ontario in the course of or in connection with business carried on contrary to section 339." That deals with business carried on in Ontario both by an extraprovincial corporation and by representatives or agents of that corporation. The prohibition is found in section 349.

We find ourselves today in the position where we want to lay charges against the people who are acting on behalf of that unlicensed Liberian corporation. On one hand, the ministry has been informed of our desire to do so and, to my knowledge, has not proceeded with any charges. On the other hand, Bill 5 seems to water down some of the existing enforcement provisions found in the Corporations Act. What we are asking today is that some modifications be made to the enforcement provisions in Bill 5, so we are not in a worse situation than we are under the present Corporations Act.

For instance, if tomorrow the bill becomes law and part VIII

of the Corporations Act is repealed, what is the situation in regard to infractions that have occurred from October 1, 1982, until today? Are they left up in the air or are they still prosecutable? That could be an area for consideration by the committee.

Section 349 also deals with the right to go to court. Deerhurst Investment Ltd. does not have the right to go to court, and yet it does almost every month. Nobody cares, apparently. From my point of view, it looks like Alice in Wonderland. There is a law that says certain things should not be done. They are done anyway, and nobody does anything about it. Yesterday there was a judgement in county court in favour of Deerhurst. It is magic. It does not even have the right to go to county court, but it goes anyway.

Those are our concerns concerning the present law. I would like to address the bill itself, so members of the committee will understand what problems the bill causes us.

Section 20 on page 9 of the bill introduces a new notion--at least as far as the present act is concerned it is new; it may not be new concerning other acts--of reasonable cause in the violation of the act. It is the first line of the section: "Every person who, without reasonable cause,..."

This adds to the burden of proof in the case of a prosecution. In addition to proving that there is an infraction, we have to prove that there is no unreasonable cause. At the moment that does not have to be done. We do not need to prove reasonable cause. All we have to do is to prove that the act has been breached, and that is it.

I would ask the committee to consider the removal of those words in subsection 20(1) so that in this respect we lose no rights that we have at the moment. We do not seek to have more rights than we have at the moment, but at least we do not want to be in a worse position next week, if the bill is passed next week, than we are today.

Another part of section 20, subsection 2, confuses the issue to a degree which creates many more problems than we have at the moment. Subsection 2 seems to deal with the case where the extraprovincial corporation itself is found guilty of an offence.

As you know, there may be charges against a corporation itself and there may be charges against the agents or the representatives in Ontario of the corporation. This subsection deals with what happens when the corporation itself is found guilty.

The section goes on to talk about "its representative." It may not have been the intention of the ministry to tie the two issues and to make subject to the conviction of the corporation itself a conviction of its representatives, but that was what the ministry achieved with the present wording.

At line 3 of subsection 2, if you take out the words "and

every person acting as its representative in Ontario," the section stands by itself. It deals exclusively with the extraprovincial corporation and with its officers and directors who have acquiesced, etc., and it has nothing to do with the agents or representatives, who can be found guilty under subsection 20(1).

"Every person" includes both physical and moral persons, so they are covered by that. By putting them back in subsection 2 it confuses the issue completely and we have to find the corporation itself guilty to have the representatives also found guilty. If the corporation itself is intelligent, it will not carry on its business itself in Ontario, it will ask others to do it on its behalf.

That is exactly what happened to us. Deerhurst may not be carrying on its own business in Ontario, but it has asked other corporations to do so on its behalf. The present wording of subsection 20(2) would create more problems than we have at the moment.

At the moment the situation is clear: the extraprovincial corporation can be charged if it is carrying on business and its agents or representatives can also be charged if they are carrying on the mother corporation's or the unlicensed corporation's business.

Mr. Cureatz: Under this the agents cannot be charged?

Mr. Latrémouille: Under this at the moment they can be charged but to be found guilty you have first to find the extraprovincial corporation guilty too, so you can comply with the present wording of subsection 2. If you remove those words, they can be charged under subsection 1 only and there is no complicated item in subsection 2 to muddy the waters.

If you look at subsection 20(1), there is--

Mr. Cassidy: I am sorry, which subsection?

Mr. Latrémouille: Subsection 20(1). There seems to be an omission to tie in the future act with the present one. If the words on line 3 after the words, "by this act,"--if the following words were added it would make sure that there is a continuity between the present Corporations Act, part VIII, and the future bill.

3:50 p.m.

If you add the words, "or by part VIII of the Corporations Act or any predecessor thereof"--by the way, these words are found in section 23, as well, so they are quite in order. Then the section would read: "An extraprovincial corporation within class 3, that is not in compliance with section 19 or has not obtained a licence when required by this act or by part VIII of the Corporations Act or any predecessor thereof, is not capable of maintaining," etc., etc. So we would cover both infractions to the bill and infractions to the present act as it stands now.

I would recommend that the committee add those words there since they are also found in section 23. The ministry seems to have realized the necessity of creating a continuity between the present law and the future bill.

If you to section 22--that is what I was referring to at the beginning. In the last three lines we have new wording to cover apparently the intent of the original section 346, the present section 346. The words may cover in law all the areas that were mentioned in section 346 of the present act.

Since laws are made for people and not for lawyers, I would urge the committee to consider putting back in the bill the original words of section 346, even though they may not add in law to the words which are in the present bill. At least for the common people, words like "to mortgage," "to sell," "to purchase" have a very practical and clear meaning. If you use terms like "to acquire, hold and convey" any land or interest therein in Ontario, they may cover that, but then a judge may find that they do not. I would like to remove the possibility that a judge in future decides they do not.

The present wording is clear. They are covered. Therefore, under the present law, the extraprovincial corporation cannot mortgage any land in Ontario if it has not acquired a licence. This is not as clear in Bill 5 as it is under part VIII of the Corporations Act. That is why we would urge the committee to maintain the wording of section 346, even though the present wording in Bill 5 may be set to cover the same ground just to be on the same side. As they say, "ex abundanti cautela"--out of an abundance of caution.

Mr. Cassidy: I am dazzled.

Can you give us the specific words you had in mind, please?

Mr. Latrémouille: For what section?

Mr. Cassidy: The insertion--

Mr. Latrémouille: Oh yes. If you look at section 346 of the present Corporations Act--

Mr. Cassidy: We do not have it in front of us.

Mr. Latrémouille: Okay. I will read the relevant words. The words are: "to acquire by purchase, lease or otherwise, to hold, to mortgage, to sell, to alienate and to convey any land or interest therein in Ontario..."

Mr. Cassidy: Thank you.

Mr. Latremouille: And finally--again there is the same concern to make sure that the present situation is not made worse by the passage of Bill 5--I would like to address the question of prosecutions under the present part VIII. There should be a section or subsection in the bill to assure transition between the present part VIII of the Corporations Act and the future Bill 5.

I do not have the specific wording in front of me but the wording could be a subsection 2 in section 26 that would basically say: "Notwithstanding subsection 1, any prosecution instituted under part VIII of the Corporations Act is still valid, despite the repeal of part VIII." It is not proper wording but it simply says that although part VIII is repealed, prosecutions are still valid and still can be instituted, or something to that effect.

Mr. Yurkow: Mr. Chairman, would it be appropriate--

Mr. Chairman: We would like to let him finish the presentation, then we will ask for questions and we will have the staff and deputy here.

Mr. Yurkow: It is directly to his point. I just hope he draws attention to something.

Mr. Williams: Let us hear the--

Mr. Latrémouille: Okay.

Mr. Chairman: It would be better if you finished, then we can come back to the point. Please continue.

Mr. Latrémouille: Okay. I was saying about section 26, I do not have the proper wording to suggest to the committee to make sure that anything undertaken by virtue of the existence of part VIII today is not jeopardized by virtue of the passage of Bill 5.

These are the concerns which relate to our apartment building, simply because the status or the legal right of the present owners, so to speak, is unclear. It is not in our interest to clarify it against our own interests as tenants. In fairness, we do not want to make the situation worse than it is at the moment. All we want is to keep things as they are, inasmuch as it is possible to do, without attacking the principle of Bill 5.

I would like it to be understood clearly we are not seeking any more rights than we have at the moment; we are simply trying to maintain our position as we perceive it to be right now. If by doing so, the bill is made better than it is now, everybody will benefit from it.

Our mandate stops there. We have not been asked to address the principle of the bill, which is whether all Canadian corporations should be put on the same footing--some should not have to get a licence and some may not have to. We have no mandate to talk about that part of the bill. That is why I have refrained from doing so.

I guess it covers most of the areas we are concerned with. I am, of course, at the disposal of the committee and staff to answer questions.

Mr. Chairman: Before we proceed to the staff, are there any members of the committee who have questions for our witness?

Mr. Cureatz: I heard the presentation and thought it was

very well documented. My concern is: have the tenants had any kind of direct suffering? Can you give me a specific example?

Mr. Latrémouille: The direct suffering is in an application to rent review for a 24.5 per cent rent increase in the context of six and five per cent, both at the federal and provincial level; a mortgage, contrary to part VIII, which will in all likelihood be passed through to tenants; property management fees of five per cent--that is the practice of the Residential Tenancy Commission--will also be passed through to tenants, in spite of the fact that management agreement is against the law.

Mr. Cureatz: Because it does not exist.

Mr. Latrémouille: Nobody in Ontario has the right to act on behalf of Deerhurst Investment Ltd.

Mr. Cureatz: Right.

Mr. Latrémouille: These are the main areas.

Mr. Cureatz: No, that is good. I appreciate that, thank you.

Mr. MacQuarrie: Let us get back to Deerhurst for a minute. Has the tenants' association at any time challenged its right to hold land?

Mr. Latrémouille: Before the Residential Tenancy Commission.

Mr. MacQuarrie: Before the Residential Tenancy Commission, not before a court of competent jurisdiction?

Mr. Latrémouille: No, because the process, as you may know, is to start there, then go to the appeal panel, then to Divisional Court. We did not choose the rules; they were made for us.

Mr. MacQuarrie: Oh, sure. In the course of your remarks, you mentioned the judgement had issued in Deerhurst's favour.

Mr. Latrémouille: Yesterday, yes.

Mr. MacQuarrie: In the course of that litigation, since you seem to be familiar with it, was Deerhurst's right to maintain an action in Ontario questioned?

Mr. Latrémouille: No, it was not.

Mr. MacQuarrie: It never has really been questioned, then, in a court?

Mr. Latrémouille: To my knowledge, no.

Mr. MacQuarrie: In your proceedings before the Residential Tenancy Commission, have you questioned this right to own property, to mortgage, to sell, and the rest? What has the

reaction of the Residential Tenancy Commission been to that argument?

4 p.m.

Mr. Latrémouille: The commissioner issued a verbal ruling to the effect that, subject to being put in writing when he issues his final reasons for decision, the fact that Deerhurst does not hold a licence does not allow the commission to refuse to exercise jurisdiction.

The commissioner at one point said, "The law is an ass." In other words, he said we have the obligation to go through the application for rent review, even though at the end of the process the whole thing may be invalidated. It seems to me that the commission has taken the position that it had that duty, because I think there is the word "shall" in Bill 163, the Residential Tenancies Act.

Mr. MacQuarrie: Yes, it does say "shall."

Mr. Latrémouille: Therefore, the commission did not have the choice of saying, "Maybe we should wait until their right to hold land or their right to mortgage or their right to sell or to buy is clarified before the courts." The commissioner has verbally stated to us during the hearing that he shall proceed, subject to the appeal process afterwards.

Mr. MacQuarrie: Is there any inherent jurisdiction in the commission to make a reference to the court on a question like this?

Mr. Latrémouille: There is, but if I remember correctly you have to go to the appeal panel first and then a party may make an application for a state of case before the Divisional Court. Then the commission makes the state of case before the Divisional Court. So it is yes, but it is after a few steps in the process.

I may be wrong on that, but my feeling is that we have to go through two levels before really having the courts enter it.

Mr. MacQuarrie: You mentioned, too, that as recently as this morning you had checked at the office of the corporations division and no extraprovincial licence had been issued to Deerhurst.

Mr. Latrémouille: I checked today, but the cutoff date for that check was April 18.

Mr. MacQuarrie: So up until April 18 they had no extraprovincial licence?

Mr. Latrémouille: That is right.

Mr. MacQuarrie: I was just wondering if I could direct a question--okay, shoot.

Mr. Wells: Mr. Chairman, I am the director of the

companies branch. I can tell the members that Deerhurst Investment has not received an extraprovincial licence from me. I sign them, and it has not received one.

Mr. Cureatz: That does not help your cause.

Mr. Wells: We will see about that.

Mr. Cureatz: Okay, I would like to hear your story.

Mr. Breithaupt: We do not know what his cause is.

Mr. Cureatz: That's right.

Mr. MacQuarrie: I have a question then of the ministry's representatives. I understand from the presentation we have just heard that your office had been advised of the fact that this corporation did not have an extraprovincial licence and it was apparently asked that some action be taken. If I am correct on that, has any action been taken or is action contemplated?

Mr. Williams: Mr. Chairman, perhaps I could speak to that on behalf of the minister.

The member for Kitchener (Mr. Breithaupt) was good enough to introduce into the debate the other evening the relevant correspondence with regard to initiatives taken by representatives for Plaza 100 requesting that certain action be taken by the ministry and, in turn, cited responses that had been issued from the minister's office.

As a result of the concerns expressed in the letter from Mr. Latrémouille, an investigation was launched by the ministry staff. In fact, that investigation, while it has been going on for some period of time, has essentially been concluded. It was undertaken by the investigation enforcement branch of the ministry.

The matter is still being assessed on the basis of the investigation that has been made to date and is currently under review by the ministry as to what appropriate action, if any, we should and can take by way of legislative authority. In short, yes, the ministry is pursuing the matter and is taking the request and the concern of the tenants seriously and has been actively pursuing the matter on their behalf.

Mr. MacQuarrie: I have one more point. Turning to section 21 of Bill 5, dealing with the capacity of an extraprovincial corporation to maintain an action or other proceeding in any court or tribunal in Ontario. Then it goes on to say, "in respect of any contract made by it."

What would we term proceedings before the Residential Tenancy Commission? Is that in respect of the contract? I would hesitate to think so, but I suppose a lease would be considered a contract.

Mr. Chairman: The witness has his hand up.

Mr. Latrémouille: If I may, it is a very good point. Our position is that the application for rent review is an application for rent review. That rent is the price for a contract called a lease. Therefore, we are dealing with 413 contracts, which are the 413 tenancies at Plaza 100. Therefore, indeed, it is in respect to a contract.

Mr. MacQuarrie: I was just questioning the wording, whether the wording in this, or at least the limitation with respect to maintaining an action and confining it simply to "contract," was broad enough to cover other matters--for instance, in tort, or in respect of matters that might not necessarily lie solely in contract.

Mr. Williams: In response to that observation, and in pursuit of the concerns raised by Mr. Latrémouille, he has made an observation with regard to the present wording of subsection 21(1), suggesting that it may not be as comprehensive and as broad as in the existing, comparable section 349 of the Corporations Act.

At the present time, of course, what is proposed in subsection 21(1) of our bill is that it would read: "An extraprovincial corporation within class 3 that is not in compliance with section 19 or has not obtained a licence when required by this act, is not capable of maintaining any action or any other proceeding in any court or tribunal in Ontario in respect of any contract made by it."

As I understood Mr. Latrémouille, he was suggesting that the broader wording in the existing section 349 should be retained in the proposed legislation. To allay any doubts or fears, it may not be inappropriate to give consideration to using wording similar to what is in the present section 349, to give a broader base to the contractual aspects of this thing.

Mr. MacQuarrie: I just wonder whether, in fact, that wording is as broad as we would like to see it. From the point of view of an extraprovincial corporation falling within class 3, which has not taken out an extraprovincial licence or is not in compliance with section 19, I feel that such a corporation should have no status whatsoever in Ontario. This is a personal opinion.

Mr. Breithaupt: And yet in this application, which goes to the county court, or otherwise, from time to time, it would appear that the ministry has not advanced any such argument on behalf of the people of the province, nor apparently has it otherwise come to the court's attention.

Mr. Latrémouille: Mr. Chairman, I think I was not understood. When I was asking for the main feeling of the present wording, it was in reference to section 346, which I read to Mr. Cassidy earlier.

Interjection.

4:10 p.m.

Mr. Latrémouille: Right. I simply mentioned the

existence of section 349, without commenting on whether the words should stay or not. It did not appear to be a deterioration compared to the present act. The only thing I mentioned about subsection 21(1) was that if the words "under part VIII of the Corporations Act or a predecessor thereof" were added, it would create a bridge between the existing requirements and the new ones.

Suppose the act is passed tomorrow. A corporation in breach of the present act could still be found not in compliance, whereas with the present wording it means not in compliance with Bill 5 only.

In other words, there may be an undesirable effect there, that everything which has happened up till today does not count.

Okay, I understand that it is not the purpose of the wording. That stimulates me in asking for the addition of the words I suggested earlier. If the words, "under part VIII of the Corporations Act or a predecessor thereof" were added, we would be sure that it is so.

Mr. MacQuarrie: You want to make sure that it is properly bridged.

Mr. Latrémouille: Yes.

Mr. Yurkow: Mr. Chairman, section 14 of the Interpretation Act provides that bridging. It reserves the right to charge anyone or to maintain any action, notwithstanding the repeal of any provision for any action that was done prior to the repeal.

Mr. Cassidy: Does this mean that an action initiated under the existing act would be allowed to be maintained?

Mr. Yurkow: It would be preserved. In fact, they could charge under the existing act for an act that was done today, notwithstanding the repeal tomorrow. They could lay a charge three weeks from now.

Mr. Williams: I was going to comment on that when I reviewed the matters that have been raised by Mr. Latrémouille, speaking to the points that he had raised in the act. I will do that in due course.

As Mr. Yurkow has said, section 14 of the Interpretation Act clearly covers that bridging situation. In fact, in addition to that, there is adequate case law which confirms that you would not be prejudiced by that situation.

Mr. Cassidy: Mr. Chairman, I would like to thank Mr. Latrémouille for his brief, particularly for his accent in Latin, which I found exemplary. I thought his brief was a very helpful one.

I would like to ask some specific questions about some of the suggestions that were made. In subsection 20(2) you raise a question, basically, about the suggestion that there is a kind of

loophole there. A corporation acting in Ontario on behalf of an extraprovincial corporation would be liable only to a \$2,000 fine, which might not be sufficient to get them to comply.

Mr. Latrémouille: No, to \$25,000, if you refer to subsection 20(1). If the words that I mentioned were removed from subsection 20(2), they would fall at the end of subsection 20(1), which reads, "or if such person is a corporation to a fine of not more than \$25,000."

Mr. Cassidy: I wonder, rather than taking words out of subsection 20(2), whether, if we were to simply put the last 10 words of subsection 20(1) into subsection 20(2), that would do the same thing.

Mr. Latrémouille: It would do the same thing that the present subsection 20(2) does. The problem is that subsection 20(2) starts with the words "Where an extraprovincial corporation is guilty of an offence."

I was taking the example of our situation at Plaza 100. The extraprovincial corporation itself, Deerhurst Investment Ltd., may not be carrying on business itself. Therefore, it cannot be charged itself because it may not be carrying on business itself in Ontario. The only recourse we have is to charge the agents or representatives of Deerhurst in Ontario.

Once this is done, and if the section is passed as is, or even with the suggestion you make, we still have to get Deerhurst guilty. That is because of the first line.

Mr. Cassidy: What would be the change you would make, then? I am not quite clear on the change you would make.

Mr. Latrémouille: We are, in fact, making a transfer. We are saying, okay, let us remove the representatives from subsection 20(2). If they are removed from subsection 20(2), they automatically fall under subsection 20(1) because the wording of subsection 20(1) is "every person who."

Mr. Cassidy: I understand. Okay.

Mr. Williams: The thing with that is where we will have some legal difference of opinion as to the interpretation of the section.

Mr. Latrémouille: Maybe I should explain: "Every person who, without reasonable cause, (a) contravenes this act or the regulations."

You should refer to subsection 4(2) of the bill, where you will see that "No extraprovincial corporation within class 3 shall carry on any of its business in Ontario without a licence under this act to do so, and no person acting as representative for or agent for any such extraprovincial corporation shall carry on any of its business in Ontario unless the corporation has a licence under this act."

If one takes subsection 4(2) and applies it to clause 20(1)(a), they are covered by the prohibition which refers to "every person who contravenes the act."

Mr. Cassidy: In practice, I think that one of the problems with all of Bill 5 is the fact that the requirements put on extraprovincial corporations are very, very minimal. My colleague, Ross McClellan, put forward amendments to Bill 6 in the Legislature on Tuesday night, which would have required a higher standard of disclosure of those extraprovincial and also provincial corporations. Unfortunately, they were rejected, in their wisdom, by the government majority.

Mr. McClellan: Torpedoed.

Mr. Cassidy: Torpedoed, that is the word.

If Deerhurst were to be licensed as a class 3 corporation, then you would go one step backwards or one step forwards in terms of having some knowledge of who controlled and owned Deerhurst, is that right?

Mr. Latrémouille: When they acquire a licence, we gain the possibility of knowing whom to talk to if we want to talk to them, if we want to charge them, if we want to do anything with them--whereas, at the moment, it is just like Alice in Wonderland. We found out the existence of Fairwin Investments Ltd. by accident. It happened one day, just floating.

We found out the existence of another corporation which has a contract with Fairwin, and this was also happenstance--nothing formal, you just hear about those things. It was only after 18 months that I was able to gather the information I gave the committee. On October 1, 1982, nobody knew anything that I told you. It just happened that way.

If we had known that Deerhurst existed as of October 1, when we were in front of you, we could have gone to 555 Yonge Street and found out who Deerhurst is, where it was incorporated, who its incorporators are, and maybe a few of its officers, because they are required to sign the form when they apply for an extraprovincial licence. At least we could have started from there.

We did the opposite. We started from the last echelon, the property manager, and tried to work up, which is not very--

Mr. Cassidy: It is awkward, yes.

Section 22 differs from section 21. Section 21 says that an extraprovincial corporation which is not licensed is not capable of maintaining an action; in other words, it is denied the right to maintain it.

Section 22, which refers to the power to hold and convey land, and so on, is set out the other way. It says that a class 3 corporation which is licensed has the power to acquire, but it does not say that a class 3 corporation which is not licensed does not have the power.

I wonder whether, in fact, it would not be better to put that in as a separate subsection.

Mr. Latrémouille: As I explained to the committee, I was not seeking to have more rights than I have today--although I would probably agree with you--but I was trying to maintain the status quo.

Unfortunately, I see that the present Corporations Act is also worded that way. That is why I was not suggesting a better wording for that. I simply wanted to maintain our position.

There is an argument, though, which is made. If one interprets the present wording of section 22 in the way you suggest, it would mean that the Legislature did not intend to do anything. If one says that it does not prevent the unlicensed corporation from doing what the licensed corporation has the right to do, then it means that the section is meaningless. Also, the courts, I understand, are reluctant to say that the Legislature did not mean anything when it enacted it.

Mr. Cassidy: I would appreciate word on this from the counsel, on whether in fact what Mr. Latrémouille says is correct. If you are a licensed class 3 corporation, and you have the power to acquire and convey land, does that mean that if you are an unlicensed class 3 corporation you lack that power?

Mr. Yurkow: I would think that would be the inference.

Mr. Cassidy: I am sorry?

Mr. Yurkow: I would think that would be the inference. I agree with the witness's assessment. The court would put a meaning to the section and, to put a meaning to it, it would have to mean that you do not have the power.

4:20 p.m.

Mr. Cassidy: Would that mean, then, if you go back to section 20, that if an unlicensed class 3 corporation acquired land, it would be deemed as contravening the act and therefore subject to penalties?

Mr. Yurkow: My opinion would be yes.

Mr. Cassidy: It seems fairly clear that--let me see if I can get the names of these companies now--481076 Ontario Inc. is acting as an agent or a representative for Deerhurst, which is a class 3 corporation that does not have a licence. Section 1 of the act makes it clear that, if you have an interest in real property, it amounts to carrying on business if you are an extraprovincial corporation.

When I put all those things together, it seems to me that there is a prima facie case for what the tenants at Plaza 100 are saying. Whoever this corporation is, which beneficially owns their building, it is in fact guilty under section 20, and should be

liable to prosecution and a fine of up to \$25,000. Is that the case?

Mr. Williams: Certainly the provisions are in the legislation to bring an action if, in fact, they are in violation of the legislation. I do not think anybody is arguing with that.

Mr. Cassidy: My question then is this.

Here we have a number of tenants who take time off work to be here today, probably out of frustration because of the fact that they have been trying to make that point to the ministry. They are clearly getting the runaround from landlords who prefer not to be known if possible, but the ministry has not taken the action it could to actually prosecute Deerhurst and say, "You cannot do that," and take them to court, at which point I suspect Deerhurst would probably respond by getting itself licensed.

That is the kind of thing one expects government to do. Why has no prosecution been launched?

Mr. Williams: Perhaps you could point out, Mr. Cassidy, where the responsibility is for the government to initiate an action if there is a violation of the act.

Mr. Breithaupt: Who is to do it otherwise? Does the government not enforce its own laws?

Mr. Cassidy: Yes, that is right. There are laws against crime in the province, and prosecutions are normally taken through by government agents. Do you pass laws with the intention of having them ignored?

Mr. Williams: No. The matter, of course, as I said earlier, is being carefully considered by the government as to whether, in fact, any prosecution should be undertaken. Clearly, the right is there to do so.

We have determined, of course, that, with regard to the management contract between Deerhurst and Fairwin Investments--and that is part of the legal problem we have come up against in determining whether or not the government is in a position to proceed with any charges. We have been carefully reviewing the management contract that exists between Deerhurst and Fairwin Investments.

There is explicit provision in that contract which provides, and I quote, "That in fulfilling its obligations and exercising its rights hereunder, the manager shall be an independent contractor and not a servant or agent of the owner, and shall have the sole independent direction of the whole of the operation of the property and of its maintenance, supervision, leasing and general overall upkeep and, fulfilling such functions, the manager shall operate and maintain the property in a manner consistent with that of a reasonable and prudent owner."

This, in itself, has been giving our legal counsel some

concern as to whether, in fact, they could start proceedings against Fairwin Investments.

Mr. Breithaupt: Are you telling us that, under the terms of their contract, they are able to avoid the application of your legislation?

Mr. Cassidy: That is absolutely bizarre.

Mr. Williams: No. It may well be that what I am saying is that, with that type of provision, it is a question of whether we could go against Deerhurst and Fairwin Investments or simply against Deerhurst.

Mr. Breithaupt: You will never know until you try, I would expect.

Mr. Williams: That is true, but I am pointing out to you that this is what the investigation has, in part, uncovered. That is why it has taken some time for us to pursue this matter, and to consult with our legal staff to determine the appropriate approach to take in pursuing this matter.

Mr. Cassidy: When was the investigation that you refer to initiated?

Mr. Williams: It was requested back in December when a letter dated December 20, just prior to the Christmas holiday period, was written by our witness today. It was addressed to Mr. Johnson of the investigation and enforcement branch of the business practices division of our ministry.

At that time, a request was made for an investigation to be undertaken. In fact, Mr. Breithaupt read the letter in question into the record in the House debate the other evening, if you recall.

Mr. Cassidy: I am a bit puzzled. You have an investigation enforcement branch within the ministry, but you just told us that it is not the policy of the government to investigate or to enforce as far as this particular investigation is concerned.

Mr. Williams: No, no.

Mr. Cassidy: That is what you said, with respect. Has there ever been a prosecution initiated by the ministry against a class 3 corporation for failing to get a licence?

Mr. Williams: To the best of my knowledge, there has not been any active proceeding against an extraprovincial corporation for being in violation of the act. I would defer to Mr. Wells, who is the director and has more personal knowledge of the situation.

Mr. Breithaupt: When he answers that question, would he also advise us that if amendments to this act are passed as they are before us, would any such prosecution be blocked?

Mr. Cureatz: And while he is answering, I would like to know why, after all these years, we suddenly have to have this.

Mr. Wells: I am sorry, I did not hear the last part.

Mr. Cureatz: After all these years, why we suddenly need this kind of legislation to allow no licensing.

Mr. Wells: First, let me say that the companies division does not have its own investigative unit. We have to rely on the business practices division of the ministry. We ask them, as a favour, to do investigations for us.

Mr. Cassidy: Do you not have the right to get those investigations done?

Mr. Wells: No, we ask them to do it, but they have their own priorities, too. We sometimes have to play second fiddle, quite honestly. We just do not have our own in-house people or good, crack investigators to go after them.

We have used the services of a crack investigator of the business practices division, who has conducted an investigation. The matter is now being considered as to whether or not charges should be laid against Fairwin, under part VIII of the Corporations Act, in regard to the principle, and so on.

I am not going to state anything further. I do not think I want to turn this into a trial.

Mr. Cassidy: Part VIII is the part requiring returns, is that right?

Mr. Wells: Part VIII of the Corporations Act is the existing legislation. Anything which took place from 1982 to the present is under that act.

As was indicated earlier, it is our view that the enactment of Bill 5 would certainly not affect any right of prosecution that we might have under the old part VIII, even if it goes forward and part VIII is repealed. We have to lose no rights in that regard.

Mr. Breithaupt: But on the second part of that: would the passage of these amendments prevent such a prosecution in the future, based on a factual situation, if it came up the day after these amendments were proclaimed?

Mr. Wells: In other words, if the bill were proclaimed tomorrow and a corporation bought a piece of land the day after that?

Mr. Breithaupt: And then you get a letter, as you did, asking, "What about things at Plaza 100?"

Mr. Wells: Under the act, we specifically said that if a corporation holds an interest in land, it requires a licence, and we have had a clear violation of the act.

Mr. Cassidy: Where does it say that in the act? I am sorry--

Mr. Wells: The definition of carrying on business says that "A corporation holds an interest otherwise and by way of security"--that is, to prevent somebody who holds a debenture from outside on Ontario property, and so on, from having to get a licence. They are not really doing business here.

If it is real property situated in Ontario--once this bill comes in, Deerhurst will require a licence. It will have to get one.

4:30 p.m.

Mr. Cassidy: Is that not the case under the present act?

Mr. Wells: That is the issue we are looking at.

Mr. Cassidy: I see. Does this represent a significant change from the existing act?

Mr. Wells: In that sense, yes. We are saying that if a corporation holds real property in Ontario when this bill goes through, then that corporation will have to have a licence. There is no doubt about it in my mind.

Mr. Cassidy: In other words, this law is more direct than what exists now.

Mr. Wells: That is the idea, yes.

Mr. Chairman: Gentlemen, we have spent an hour with this witness. We have one more yet. I think we should proceed to--

Mr. Cureatz: Right after my question.

Mr. Chairman: All right. What was your question again?

Mr. Cureatz: Why? Why do we suddenly need the legislation? Has this been going for years, and has it come through the mill, or is it just suddenly, out of the blue?

Mr. Wells: Part VIII of the Corporations Act has been essentially unchanged since 1900.

Mr. Breithaupt: We do not want to rush into these things.

Mr. Wells: The companies division--

Mr. Cassidy: The present legislation is rather ahead of the government.

Mr. Wells: We did the Limited Partnerships Act, which had not been redone since 1849, so--

Mr. Cureatz: We need a new company law committee.

Mr. Wells: In the last 10 years, we have moved in many areas to update and modernize the law.

Mr. Breithaupt: I think it is fair to say, really, that there has been a goodly variety of changes in corporate law, not only in the Corporations Act but a variety of others.

Mr. Wells: That's on the list.

Mr. Breithaupt: This is an area that has not really come up, particularly, with the kind of knotty problem that we see today.

Mr. Williams: As I mentioned in the House the other evening, this legislation is being introduced at this time simply to make the basic existing provisions under part VIII of the Corporations Act more modern, current and consistent with what has been happening, with the changes that have recently been made in corporate legislation.

We have dealt with the Business Corporations Act within the past couple of years, and with changes in the Insurance Act. The Loan and Trust Corporations Act is under review.

The old Corporations Act, as we know it, is being dismantled, in effect, and new, specific legislation is under way. The omnibus aspect of that legislation is causing it to self-destruct as we bring more specific and precise legislation on stream. This bill is an example of how we are modernizing, if you will, the existing legislation.

Mr. Cureatz: I am awfully confused. I am just a humble little lawyer from Newcastle trying to find my way in the big city of Toronto. We have the witness, who says that the proposed legislation would enable the corporation to continue without a licence. That is what I--

Mr. Breithaupt: The present corporation.

Mr. Cureatz: The present corporation, the one you are talking about.

Mr. Breithaupt: It would appear that way without the--

Mr. MacQuarrie: No, there is a prohibition in the act, as it exists, against them carrying on business in Ontario unless they are registered, but the thing is that no one is taking any action on it.

Mr. Chairman: Gentlemen, we seem to be getting into debate. We are here to hear some witnesses, so, thank you, Mr. Latrémouille, for being with us.

Mr. Cassidy: I trust that Mr. Latrémouille is planning to stay when we get to the clause-by-clause, because I think he made some helpful suggestions. Perhaps we can call on him at that time.

Mr. Breithaupt: I will, as well, be placing certain amendments that have been created as a result of my comments. His presence would be very helpful in seeing us through some of those, since he knows the circumstance much better than any one of us in the room.

Mr. Cureatz: While the new witness is coming up, let us have the director sort of explain this to me.

Mr. Williams: Mr. Chairman, if I could respond to--

Mr. Cureatz: John, do not explain it to me, because I will be more confused.

Mr. Williams: That may possibly be the case. I wanted to address the concerns that have been raised in point form by the witness.

Mr. Chairman: Excuse me, Mr. Williams. Let us please get to the other witness. I am sure that we will be subject to the same sections, more or less.

Mr. Cureatz: Mr. Chairman, before we get to the other witness, I would just like to have a few little points cleared up in my mind, so that when the witness is up, I will have a better handle on it in terms of what has happened. Is that too much to ask?

Mr. Chairman: All right, Mr. Cureatz. Continue, Mr. Williams.

Mr. Williams: You asked the counsel a specific question on that.

Mr. Cureatz: Right. You mentioned that, for sure, Deerhurst, or whatever corporation it is, would require a licence. That is where I am having some confusion. Then Mr. MacQuarrie got into the act. Bring me up to date. Do they need a licence?

Mr. Wells: At the present time or under the new bill?

Mr. Cureatz: Under the new bill.

Mr. Wells: Under the new bill, if the corporation owns an interest in land, it will be carrying on business here, and it will be required to have a licence.

Mr. Breithaupt: And there is no grandfathering provision there that will protect this situation from that requirement? They must have a licence when that bill passes?

Mr. Wells: Yes, they will have to get a licence.

Mr. Breithaupt: What happens then with the bill as it now stands? Do they require a licence which they have not, in fact, obtained?

Mr. Wells: That is what we are investigating at the

present time. We are taking a good, hard look at that, I assure you, to see whether or not Deerhurst or Fairwin or Tse Investments or Jack Tse himself, perhaps, is acting as agent improperly. If they are, we will be taking action against the corporation, but we have not yet concluded the investigation.

Mr. Breithaupt: Okay, but we have also looked. We had this bill before us when it was called Bill 103. Some more months have gone by. The points were on the record, then, in the remarks which I made.

Perhaps I have missed it, but it seems to me that it is not difficult to bridge the situation that they claim to own certain lands, that someone else is managing them for them, and that they do not happen to have a licence, because, as you have said, you sign the licences and you have not signed one for them.

I do not understand how much more there is to investigate than that. Perhaps you could help me on that. I do not want to in any way compromise what you are doing, but it just seems to me that it is pretty well what we Latin scholars used to call a prima facie case.

Mr. Wells: It may turn out that way and there may, in fact, be prosecutions. Do not forget, the definition of "carrying on business" under the old act is different from what it is in the new bill.

Mr. Breithaupt: Will that be a compromise in the future to a situation like that, or should the definition remain, because it has at least been discussed and considered, and has become familiar over the years?

Mr. Wells: This is one of the most difficult sections we had to draft, and we had an awful lot of input from members of the private bar, the Canadian Bar Association, and so on. It seems as if we kicked around a million definitions of what constitutes "carrying on business." We have come up with what we think is a smoother, more streamlined and more effective definition in the new bill.

Mr. Breithaupt: That does not leave out any of the peculiar or particular aspects in the earlier definition which might compromise any situation? You believe it to be somewhat broader, do you?

Mr. Wells: Yes, we are including the service industry, for instance--offering services as opposed to goods, wares and merchandise, and so on, and various other little technical changes which I am not going to bore the committee with, obviously.

Mr. MacQuarrie: I have one question.

Mr. Chairman: Of whom?

Mr. MacQuarrie: Just to clarify in my mind the requirements of the existing legislation, does an offshore

extraprovincial corporation require a licence in order to hold land in Ontario?

Mr. Wells: A foreign corporation? Under the present act? If that is its business, if it is a land development company, I would think yes.

Mr. MacQuarrie: But is there a requirement in the present law that an offshore extraprovincial company should be licensed in order to hold land?

Mr. Wells: In other words, if it acquires land without a licence, what is the effect of that?

Mr. MacQuarrie: Yes.

Mr. Wells: It is a sticky question. I am aware of one case that goes back to the 1950s, I think. I cannot remember the name offhand.

Mr. Latrémouille: Court of Appeal? In the 1950s?

Mr. Wells: I think it had to do with legislation, which was not this legislation. It had to do with mortmain legislation.

Mr. MacQuarrie: Mortmain, yes.

Mr. Williams: The Gavin case?

Mr. Wells: I believe it is the Garner case.

Mr. Breithaupt: Ancillary objects, or--

4:40 p.m.

Mr. Wells: I think what the court determined was that the title passed, but was voidable at the instance of the crown because the corporation did not have a licence in mortmain to hold land.

That is a little separate issue. It is not directly on the point we have here, so I am hesitant to say that this would be the law here in Ontario with respect to extraprovincial corporations. It is along those lines. The corporation, in fact, did acquire title to the property.

Mr. MacQuarrie: It was always my impression, in having done a certain amount of conveyancing, that an offshore extraprovincial corporation required a licence in order to hold land. I just wondered whether the ministry subscribed to that view or not.

Mr. Cureatz: Now they are saying that, for sure, they are going to have to have a licence.

Mr. Breithaupt: They are also saying here they are not sure if it is an ancillary object or part of the general corporate powers. They only have a stronger feeling of surety if it is in

the land development business as such, it being a primary object of the company. That appears to be the difference that I am trying to sort out generally.

Mr. Cureatz: Okay. Then you are saying that this says for sure that you have to have a licence.

Mr. Wells: Yes.

Mr. Breithaupt: At the present time, you are not all that sure as to whether a licence is required to deal with the ancillary object of a bakery that happens to buy the building in which it is going to bake its bread, the corporation otherwise having the rights of a natural person and therefore not to be interfered with lightly if that is not its primary object?

Mr. Wells: It is not a simple question.

Mr. Chairman: Thank you, gentlemen, and thank you again, sir. The next witness we have is Ms. Leslie Robinson, from the Federation of Metro Tenants' Associations.

Ms. Robinson: I have copies of our submission.

Mr. Chairman: Fine. The clerk will get them and he will distribute them. Thank you very much. Please proceed.

Ms. Robinson: I will just start, then. I would like to thank the committee for giving us an opportunity to speak to Bill 5 today. The actual part of the brief that I intend to read from is not very long, so I beg your indulgence if you follow with me. I will probably be adding some comments along the way.

My name is Leslie Robinson. I am now staff director with the Federation of Metro Tenants' Associations. The Federation of Metro Tenants' Associations is an umbrella organization of organized tenants' associations in Metro Toronto.

There are actually two issues of concern to tenants across Ontario that are related to your consideration of Bill 5. We would like to discuss with you the implications of our two areas of concern.

First, we are and always have been concerned with the accessibility and disclosure of information relating to the names of directors, officers and principals of corporate landlords. Second, we are also concerned with the accessibility of a person or corporation to contact for service in Ontario and with the availability of the name of that person or corporation.

However, before fully discussing the implications of the accessibility of corporate information and of an agent or person to contact for service, we would respectfully like to remind members of this committee that, as members of this government, each of you represents your constituents, who are consumers of this province, and not the business areas from outside the province.

As consumers, the Federation of Metro Tenants' Associations would have liked to have been consulted prior to the drafting of this legislation, as were the Board of Trade of Metropolitan Toronto, the Canadian Bar Association, the Canadian Federation of Independent Business and the Ontario Chamber of Commerce.

While we do understand the merits of consulting with business in the matters of the activities of corporations acting in Ontario from outside Ontario, your approach in consultation and the attitudes declared by Mr. Williams on behalf of the Minister of Consumer and Commercial Relations, Robert Elgie, appear to be one-sided.

Quoting from Hansard of Tuesday, November 22, 1983, during the discussion in the Legislature regarding Bill 103, the predecessor to Bill 5: "...to make this legislation more relevant to today's situation and make it more fair and appropriate for the purpose of conducting business in this province by truly foreign corporations. I think we have to have that perspective in mind as we address some of the concerns that have been raised."

Certainly you wish foremost to be fair and appropriate to the citizens of Ontario, and it is only in the interest of the citizens of Ontario that you would wish to regulate the conducting of business by extraprovincial corporations in Ontario.

The federation would like to present to you one aspect of that perspective--the perspective of tenants who live in buildings owned by extraprovincial corporations. Mr. Claude Latrémouille of the Plaza 100 Tenants' Association is here today. He has already discussed some of the specifics as they relate to Plaza 100. I will refer to his situation, but I also want to make some general comments.

Our first comment is one of support, and it is support for something that I already heard is in Bill 5. It is the inclusion of extraprovincial corporations that own land in the definition of those corporations that carry on business in Ontario. This section would cause all corporate landlords not incorporated in Ontario to be included in the provisions of the act. That is a very substantial change of Bill 5 over the current Corporations Act. We appreciate that change and would encourage the change to continue to be included in the act.

Our second comment, however, is one of concern about the effect of subsection 4(1) which allows Canadian-based extraprovincial corporations to carry on business in Ontario without seeking a licence, that is class 1 and class 2 corporations that are incorporated in Canada but do not have their residence in Ontario. This bill proposes that those corporations be allowed to carry on business in Ontario without seeking a licence.

We have attached to the submission, and marked as appendix A--it is actually the bulk of the submission--a copy of the application for extraprovincial licence. If you turn to four pages later, you will see the application for licence that must be

filled out by a corporation outside Canada now to operate in Ontario.

If you look at the first part, the actual application for extraprovincial licence requires information about the corporation, almost all of which would be available about Ontario corporations from the Ministry of Consumer and Commercial Relations.

The second part of the application is a power of attorney. This is the form that Plaza 100 tenants would have very much liked to have had Deerhurst sign over to the numbered company or to the property management company. This is our power of attorney form to designate an agent in Ontario as acting on behalf of an extraprovincial corporation. It is the filing of these forms and the payment of \$200 which is the paperwork or red tape involved in filing for a licence to operate in Ontario.

These forms do not appear to us to be particularly complicated or difficult. However, they do provide the two items of information which are necessary for tenants' associations. Particularly, the forms require information which is currently available about Ontario-based corporations; that is, the names of directors and officers and the name and address of an Ontario person or corporation for service.

Tenants require corporate information about their landlords when the landlords apply to the Residential Tenancy Commission for a rent increase in excess of six per cent. This information is matched against the corporate information about the holders of mortgages and companies that contract out work to the landlord in order to detect non-arm's-length transactions. This information must be accessible in Ontario to all tenants.

4:50 p.m.

Tenants also require the name and address of a person or corporation to contact in Ontario to communicate with and also if necessary to serve in the case of court action. The Plaza 100 situation is a prime example of what happens when no such person is so appointed.

If this committee can assure us that these two pieces of information are available in Ontario to tenants of extraprovincial Canadian landlords, then we would have no objections to Bill 5. If the corporate information were available to us, if the name and address for service--I am getting positive signals from the gentleman from Consumer and Commercial Relations. Otherwise, we would have opposition to Bill 5; it would be vocal and it would be public.

In our eyes, there becomes a conflict between the right of consumers to know who they are dealing with and the needs of extraprovincial corporations to not do paperwork. However, recent policy directions of the Residential Tenancy Commission indicate the Ministry of Consumer and Commercial Relations is acting to increase the accessibility of information and to increase the disclosure provisions, not to reduce such requirements.

In addition to our general comments, there are some specific comments we have relating to particular clauses.

Subsection 20(1) imposes a penalty on persons who are in contravention of the act "without reasonable cause." This is a point that was brought up by Mr. Latrémouille. What is reasonable cause, and what are the implications of this statement? We would propose the more common wording that every person who knowingly contravenes the act be guilty of an offence.

To go on to subsection 20(2), this is the section that prompted much discussion earlier. It would appear to require that the extraprovincial corporation in question be found guilty as a prerequisite for charging persons acting in Ontario as agent. The wording of the subsection says that "where an extraprovincial corporation is guilty of an offence," then someone who acts in Ontario as their agent can also be convicted.

We have a bit of a different suggestion for change. Rather than omitting those words in subsection 20(2), we would suggest that an additional subsection be drafted to specify that agents may be found guilty of an offence under the act or under subsection 20(1), notwithstanding the laying of charges against the extraprovincial corporation, so that both in fact could occur.

In subsection 21(1), we make the same suggestion as Mr. Latrémouille, that the wording "or by part VIII of the Corporations Act or a predecessor thereof" be added. However, it has been pointed out that the Interpretation Act covers that instance.

In conclusion, we would like to thank you for your consideration, and we would like to extend a welcome to this committee and to government to consult with consumers as well as corporations in the matter of consumer and commercial relations. The tenants in Metro Toronto would be happy to provide input and feedback to government about matters affecting us. Thank you very much.

Mr. Williams: Just a couple of comments, Mr. Chairman, before you entertain questions, speaking to the main points in the brief that has been submitted.

The matters of adequate information being provided with regard to corporations--as to location, who the officers are, addresses, the appropriate people for service in cases of litigation--are all matters that have been of concern to us and were dealt with the other evening when we were dealing with Bill 6. Bill 6 is complementary to Bill 5, Bill 6 being An act to amend the Corporations Information Act.

It was at the time of the enactment of that bill the other evening that we did broaden the base, albeit not as extensively as the member for Bellwoods (Mr. McClellan) would have liked and asked for. Notwithstanding, we did broaden the base to ensure that the type of information you are suggesting be required; in fact, it is now incorporated into the Corporations Information Act.

We can provide for you a copy of that bill, if you wish, if you are not familiar with what additional information was called for.

Ms. Robinson: No, I am not familiar with that.

Mr. Williams: It specifically provides, in subsection 4(1), that "An extraprovincial corporation shall file the following information: (1) The name of the corporation. (2) The date and manner of its incorporation or amalgamation. (3) The name of jurisdiction under which the corporation was incorporated, amalgamated or continued. (4) The address of the head or registered office of the corporation. (5) The date on which the corporation commenced activities in Ontario. (6) The name and office address of its chief officer or manager in Ontario. (7) The address of its principal office in Ontario."

Then an amendment was introduced, adding an item 8, which was the name and office address of its agent in Ontario.

Ms. Robinson: Is there a requirement that there be an agent or an office in Ontario for Canadian corporations outside of Ontario?

Mr. Williams: No, there is no provision for domestic corporations as such to file. The federal companies have no requirement in that regard. Is this not correct, Mr. Wells?

Mr. Wells: For the last 60 years.

Mr. Williams: Therefore, this is a provision which pertains specifically to the extraprovincial corporations. They are required to provide more information than they might be if they were a domestic corporation.

Ms. Robinson: I suppose this would satisfy our first concern, which is the availability of the names of the officers and directors of the corporation. The second part of the application for a licence for an extraprovincial corporation is the appointing of a person or a corporation in Ontario to act as power of attorney.

Tenants who live in buildings in Ontario would appreciate being able to deal with a person or a corporation in Ontario. I can give you an example. There is a building at 600 Kingston Road which is owned by a man who lives in Vancouver and whose lawyer lives in Alberta. The tenants have had a very difficult time trying to negotiate with the landlord. They have appointed agents to act on behalf of their interests in the rent review application they have made. However, those agents will not go any further than the rent review application. If somebody has a leaky tap and the superintendent cannot take care of it, they have to deal with someone else in British Columbia.

The inclusion of Canadian extraprovincial corporations in Bill 5 would require them to appoint somebody in Ontario so the tenants could at least stay within the province when they want to contact their landlord.

Mr. Williams: The context of this legislation is to deal specifically with the extraprovincial corporations which constitute or comprise less than one per cent of the corporations doing business in Ontario. Under section 19 of this bill, there is a very specific provision for an agent for service in the province. However, this does pertain specifically to the extraprovincial corporation within class 3.

Ms. Robinson: Is this class 3?

Mr. Williams: That is right.

Ms. Robinson: Our concern would be for that same requirement to be imposed on corporations in class 1 and 2, those outside of Ontario but in Canada. As I understand it, this is one of the major changes of this bill; it takes away the requirements from corporations outside of Ontario but within Canada which it used to impose upon us.

Our concern would be that it would take away the requirement for a person or a corporation to be appointed as a power of attorney in Ontario in the case of an extraprovincial Canadian landlord with whom the tenants could deal. It takes away the requirement that there be an Ontario person with whom to deal.

5 p.m.

Mr. Williams: The act is not taking anything away. Under the Judicature Act, the rules of procedure facilitated the means of effecting service on representatives or officers of corporations which may not be within class 3 but are either federal or provincial corporations from another province. Under those procedures, as you know, it was a rather cumbersome, costly process at one time. You had to get a court order to effect service outside the province.

This has been streamlined. The process is such that one can as effectively serve a representative of a company, albeit an Alberta company, a British Columbia company or whatever, by initiating the process here in Ontario and having service effected in that other jurisdiction. It has been greatly facilitated under the amendment to the procedures in the Judicature Act.

Mr. Chairman: Thank you, Mr. Williams. I think Mr. McClellan has been waiting patiently to ask our witness a few questions. Please proceed, Ross, before you forget the question.

Mr. McClellan: Thank you. I will be quite brief. I just wanted to ask Ms. Robinson a question.

With respect to your second comment regarding a tenant's requirement to obtain corporate information, are you speaking specifically about the names of directors and officers and the name and address of an Ontario person or corporation for service? Are these the principal things you are concerned about obtaining?

Ms. Robinson: Within the context of this act, we are also concerned that there is no access in Ontario to the

principals of corporations, to the real owners of the corporation. We would like to see this. However, we will restrict our discussion to the context of Bill 5.

Mr. McClellan: I am just concerned about the names of directors and officers. You have indicated that the forms you have included as appendix A would set out information that is currently available about Ontario-based corporations, that is, the names of directors and officers. I cannot find this in your material. I must be missing something. Could you show me where the requirement is to identify--

Ms. Robinson: It is on the first page under the supporting documents. Actually, it is under the officer issuing the certificate.

Mr. McClellan: Yes, I see. I assume this could be the agent in Ontario. I do not think there is any requirement--

Ms. Robinson: For officers and directors?

Mr. McClellan: --for officers and directors to be identified, unless I am missing something. Perhaps under the official's--

Ms. Robinson: Are officers and directors already filed with the Ministry of Consumer and Commercial Relations?

Mr. McClellan: This is one of the things I was trying to get at with our amendment to Bill 6 the other night, which I will make available to you. It would have provided for quite an extensive amount of corporate disclosure for both extraprovincial and provincial corporations. However, the other two parties chose not to support it.

Mr. Breithaupt: I think there is some uncertainty, is there not?

Mr. McClellan: No, not really.

Clerk of the Committee: I think it is covered under the supporting documents--

Mr. McClellan: I am sorry. I cannot hear you.

Clerk of the Committee: Appendix B.

Mr. Williams: I think Mr. Wells can comment on this.

Mr. Wells: With reference to the supporting documents, which are the instructions for completion of the form, all we are asking for is a certificate of status issued by the jurisdiction to which the corporation is subject. This would be under the seal of the appropriate government official, indicating that the corporation is in existence and that they are not licensing some dissolved company, a corporation under the wrong name or something like that.

In Ontario, we require information as to the directors, officers, senior managers and so on--their names, addresses, the whole works. We do not require this of extraprovincial corporations. This information is fully available in the jurisdiction to which the corporation is subject.

The vast majority of corporations which are extraprovincial and do business in this province are federally incorporated, so the information is available in Ottawa. There are more than 30,000 of them. I think we have an extra 2,800 corporations incorporated in other provinces, which represent less than one per cent of the businesses operating in Ontario.

If we required all of this information to be filed all the time, we would be buried in it. We think the best source of information as to who the directors and officers are of a particular corporation that is not in our jurisdiction is the jurisdiction that governs them, and that is the approach we have taken in the past.

Mr. Williams: Bear in mind what information we have made mandatory under this Corporations Information Act that we enacted the other evening.

Mr. McClellan: With great respect, I do not think that gives the names of directors and officers of extraprovincial corporations, unless my memory is failing me.

Mr. Wells: No, that is not one, that is true.

Mr. Williams: The name, office and address of the extraprovincial corporation's chief officer are mandatory in Ontario.

Mr. McClellan: Again that could be the Ontario agent; it would not need to be a member of the board.

Mr. Wells: Although that person would certainly, under the rules of practice, be a person who would be able to accept service of documents.

Mr. Breithaupt: That is why it is there.

Mr. McClellan: I understand that. The point I am trying to make is that part of the concern Metro tenants have set out, which they hope will be addressed in the legislation, is being met, but part of it is not.

I have another question for Ms. Robinson. I assume you have had difficulty in your experience in getting the names and addresses of directors and officers of extraprovincial corporations for purposes of rent review and other landlord and tenant issues.

Ms. Robinson: I must say honestly we have followed the difficulty that Plaza 100 has been under. Plaza 100 are affiliate members of the association. We had difficulty with the 600 Kingston Road people. Other than that, I am personally not aware

of any other difficulties, although the federation is a small organization and does not handle individual rent review cases.

Mr. Breithaupt: But this is the first time this rather peculiar extraprovincial corporation wrinkle has appeared, in your experience?

Ms. Robinson: The first time I saw Bill 5 or heard about this discussion was two days ago.

Mr. Breithaupt: Or ever heard about what kind of a creature it was?

Ms. Robinson: Yes.

Mr. Breithaupt: That is understandable, of course.

Ms. Robinson: We knew that Deerhurst was an extraprovincial corporation from Plaza 100. I knew that Plaza 100 tenants were pursuing that end.

We did not receive a copy of Bill 5 or of Bill 103 when it was first drafted or being circulated. The first time we saw Bill 5 was when Claude Latrémouille came into the office a couple of days ago. In haste, we drafted this presentation. I must apologize if it is inaccurate about the requirement of officers and directors.

That information is crucial to tenants who are trying to defend against a landlord's application for rent increase because, when you have a landlord applying for a rent increase and the tenants name the landlord, they name the mortgage holders and the contractor who fixed the roof or the contractor who does the management. There is no other way of checking whether there is an arm's-length relationship between those companies unless you do a corporate search.

We instruct tenants to go to the Ministry of Consumer and Commercial Relations to do corporate searches of their landlords and the holders of the mortgages and the contractors. We could not instruct tenants to do that, I guess, if either the landlord or the mortgage holder or the companies doing the work were incorporated outside of Ontario.

5:10 p.m.

Mr. McClellan: My concern is that part of your problem is not being addressed. In the debate on Bill 6, I used the example of the 50 numbered companies in Cadillac Fairview. After the passage of both Bill 5 and Bill 6, nobody will still know who they are.

I think you should look fairly critically at both pieces of legislation, because I am afraid that by the measure of your own criteria, that they do not measure up. There are still going to be serious problems in both identifying corporate interrelationships with respect to--

Ms. Robinson: Even with directors and officers there is a problem because it is often a lawyer in trust, for who knows who.

Mr. Breithaupt: And two secretaries who have no relationship, of course.

Ms. Robinson: And somebody and their brother doing it for their mother.

Mr. McClellan: I just wanted to try to clear that up.

Mr. Chairman: Are there any further questions by any other members to the witness? If not, thank you, Ms. Robinson.

Ms. Robinson: I also have, just to file with you, a copy of a letter to the newly elected alderman in ward 6 of the city,

Dale Martin, who is the alderman for the Plaza 100 tenants. He has written a letter pressing on the issue of corporate disclosure and also supporting the submission of the Plaza 100 tenants.

Mr. Chairman: The clerk will distribute it. Thank you, Ms. Robinson.

That brings us to the conclusion of the hearings of the witnesses, and we will now move to the clause-by-clause of Bill 5. Does the committee prefer to do it section by section, or could we lump a few together? I do not recall that there was much discussion prior to sections 19 or 20.

Mr. Breithaupt: As committee members will be aware, the points which were raised on second reading debate have been quite fully reviewed by Mr. Latrémouille, who was before us today. I am not going to review those matters in depth.

I do have a series of amendments which I am going to be placing before the committee with respect to changes to section 20 that follow through the variety of themes that we have discussed.

In addition, there is the matter to be sorted out with respect to the definition of the business corporation situation. I understand from the director and from the other information we have had that, in the ministry's view, the new definition takes nothing away from what is there presently. It does, perhaps, modernize and somewhat streamline the matter.

Indeed, it is my understanding that it is the ministry's view that, in fact, this new definition expands upon what has been somewhat more particularly set out heretofore.

So, with that understanding, and my hope that you are correct in your view, the only amendments that I will be making to place before the committee will be these four that are before you. The first refers to subsection 20(1).

Mr. Chairman: You may proceed with the discussion; we are having copies made at the present time.

Mr. Breithaupt: As a result, I would think that, in so

far as I am concerned, the first 19 sections of the bill can carry.

Mr. Chairman: Thank you, Mr. Breithaupt. The clerk has gone out to make extra copies so that each member has a copy of all your amendments.

Mr. Williams: Are there no amendments up until section 19?

Mr. Chairman: No, it seems not.

Mr. Cassidy: I would just ask--the two witnesses may, in fact, have comments on any section up to 19. I do not believe they do.

Mr. Chairman: Mr. Cassidy, we have had the witnesses before us; we are into the clause-by-clause now.

Mr. Cassidy: Yes, I realize that.

Mr. Chairman: If the witnesses have any comments, I am sure they could pass you a note and you could pass them on.

The members now have Mr. Breithaupt's amendments. I think we should proceed with the bill.

Mr. MacQuarrie: I have one comment with respect to subclause 10(1)(b)(ii), "if the use of that name would be likely to deceive."

I find some difficulty with the use of the word "deceive" here. For instance, in the Trade Marks Act and other acts where there is a likelihood of confusion in the minds of people coming in contact with the marks or, in this case, with corporations using trade names, these acts use words such as "confusing" or "likely to deceive." They do not confine it to the element of deception only; they deal with confusing, misleading or likely to deceive.

I find in actual application before a court, the concept of deception is sometimes difficult to establish. I just wondered if Mr. Wells would care to comment on that.

Mr. Wells: Yes, I would be pleased to. The particular section really is taken from the Business Corporations Act.

Mr. MacQuarrie: I realize that.

Mr. Wells: We have extensive experience with this wording. At any one time under the Business Corporations Act, Corporations Act and indeed under part VIII of the Corporations Act right now, we have about 50 files on the go, where persons have complained about the name of another corporation being so similar to theirs as to be likely to deceive the public. That is what it amounts to. There is extensive law going right to the Supreme Court of Canada interpreting this type of wording.

In essence, and this will be filled out in the regulations,

a name will be likely to deceive if you went to deal with a corporation when you really wanted to deal with another corporation. In other words, you wanted to deal with A, but you dealt with B by mistake, thinking it was A.

One of the other criteria used is whether or not you might falsely associate two corporations as being units of the same company; Coles Sporting Goods and Coles The Book People, for instance, was a case that actually went to the courts on that sort of problem.

Really, it works very well. We have had many hearings and there are an awful lot of decisions available. So far, I am pleased to say that while I have been around, we have not been successfully appealed on any of these decisions. That probably means the kiss of death, having said that.

5:20 p.m.

The lawyers and the people who deal with us are given complete information about what the law is. We have a record of all the decisions which we have rendered. They form great piles of books and they are available to the public, etc., and the system works quite well. The wording is in fact well defined in the law.

Mr. MacQuarrie: I have no doubt that the words have been defined and judicially interpreted.

Mr. Wells: If I may interrupt, in the regulation there will be assistance for persons in determining what those words mean, so they are not left out in the wild blue yonder thinking, "What on earth does it mean?" We will be defining it.

Mr. MacQuarrie: I had wondered whether it might be related more closely to some of the other acts, either federal or provincial, that apply to corporations and their dealings, whether it be the one I am most familiar with, of course, the Trade Marks Act. There, where trademarks or trade names are confusing or deceptively misleading, this sort of thing, there is also quite a body of jurisprudence on the meaning of those words.

Mr. Wells: Right, but of course trademarks are a federal matter--

Mr. MacQuarrie: I realize that.

Mr. Wells: --and of course we cannot tread on their territory. Second, in this situation we are not talking about a lawsuit between two parties where there is a lis between the parties, if I may use the technical term; we act in this situation for the benefit of the public who are likely to be deceived.

Mr. MacQuarrie: That, I think, is the main thrust of all of it: the elimination of possible confusion.

Mr. Wells: Yes. It is not designed to help some particular person who happens to have a grudge against someone else.

Mr. MacQuarrie: No, I realize that. All right, if it is covered in the regulations or amplified, fine.

Mr. Wells: Yes, it will be.

Mr. Chairman: Mr. Breithaupt, would you move your motion, please?

Mr. Breithaupt: Yes. The members of the committee will recall the comments I had made on second reading with respect to four themes that, in our view, had not been addressed by the changes that were proposed in the bill. Certain other themes, following the comments that were made on second reading of Bill 103, were reviewed by the ministry. If you happen to look at my remarks in Hansard, you will see that those items have been accommodated, and I believe the bill is stronger as a result of them. There are, however, four areas that, in my view, require some further amendment, and I will put them to you, two in section 20, one in section 21 and one in section 26.

The importance of placing these amendments is to underline once again our view that it is most important that we ensure that no one is absolved from the traditional operation of the extraprovincial corporations legislation through the passage of amendments to this act today. This will be reinforced by my view that if this situation were to arise after the passage of these amendments in a separate instance, the protections that the new legislation would give must be clearly seen to be as important then as they are in dealing with situations that have developed so far.

We were of the view that there would be the likelihood that certain parties to the passage of this bill would be absolved from the rules and application of the Extra-Provincial Corporations Act. This meant, of course, such parties as Cadillac Fairview or the Laurence Caroe law firm, perhaps the well-known firm of Goodman and Goodman or, indeed, even the operation of Spar Property Consultants Ltd., the company formed by former employees of the Residential Tenancy Commission that represents landlords to some extent at commission hearings.

We want it clearly known, and I believe it has been stated by the director, that any changes to the statute now will not in any way weaken the statute. This is something I have taken from his remarks and I am pleased to see that.

In any event, the four sections we can deal with and possibly complete before we have to leave today are, first, an amendment to subsection 20(1), "That the bill be amended by deleting the words 'without reasonable cause' in line 1. The reason this amendment is proposed is because it is our view that the bill otherwise waters down the strength of the penalty provisions by providing that a person can be found guilty of contravening the act and its regulations or of the condition of a licence only if the person commits such an act without reasonable cause.

In our view that would give a way out to those who have

acted and who may attempt to rely on some internal agreement or management contract, such as the one quoted, to say they had, in all innocence, dealt in such a way that should enable them to be absolved from the operation of Ontario law. The existing penalty provisions which exist under section 8 of the Corporations Act do not contain such a phrase. Indeed it appears much more straightforward and clear-cut.

Unless the extraprovincial corporation has a licence and unless that licence is enforced, if you look at section 348 of the act, the extraprovincial corporation or its agent is guilty of a certain offence. From the comments made this afternoon, there seems to be uncertainty in the ministry as to whether such penalties can apply where the main object of the corporation is something other than holding development land. So if a corporation had land development as its main function, it might properly require a licence under this act, whereas it may be that ancillary objects or the normal acquisition of land as part of another major business might be a reasonable ground upon which to exempt that corporation from obtaining this licence.

That, as I understand it, is the dilemma in which the ministry finds itself as a result of study and the opinions that have been obtained. We are of the view that the penalty provisions must be clear and the opportunity for exemption or exception to such a provision should not be in the act. Accordingly, the removal of these words "without reasonable cause" in our view would strengthen the act and would not give any opportunity to parties dealing in this kind of situation to claim exemption in any way from such a licence.

5:30 p.m.

As Mr. MacQuarrie mentioned earlier, he understood the ordinary practice required an extraprovincial corporation to obtain such a licence. I must say that in my modest solicitor's practice in Kitchener some years ago, I thought that was simply a rule as well and that the question did not arise. However, I admit that it involved me only on very few occasions where one even remembered the application of a statute such as this.

In any event, I think the removal of these words would strengthen the act. I look forward to hearing from the director or the other ministry representatives as to their views on that suggestion.

Mr. Mitchell: Mr. Chairman, I heard the people appearing before us raise their concerns about those particular words in section 20. I have listened to the member for Kitchener. However, it strikes me that, without those words, we are really--I am not sure whether "prejudging" a situation is the precise word.

There are many things which each and every one of us signs in our lifetime. When we fill out our income tax forms, we say, "To the best of my knowledge, I swear that the above is true." I think these words are on the bottom.

What we are implying by removing it is that all these people

carrying on business out there are going to try to do something to abuse the system. Surely, "without reasonable cause" is a statement which most of us would accept or expect if we were working for somebody and carried out our duties in good faith--if, for whatever reason, something were passed to make proof necessary, we could prove that there was no attempt at circumvention, or whatever.

However, by taking those words out, we are not even allowing for that. It becomes simply this or nothing. This is why the removal of these words has me a little concerned. By taking them out, we are removing from these people the same rights which most of us have in any other dealings we use.

I am not a lawyer. Pardon me for--

Mr. Chairman: Excuse me just a minute. Before we start, I think Mr. MacQuarrie had something to say. Then we will get back to you.

Mr. MacQuarrie: I have heard Mr. Breithaupt's comments, as well as the presentations made. To my mind, there appears to be a certain degree of merit to them.

I was going to direct a question to the parliamentary assistant or Mr. Wells. Could you give us an example or two of what you would consider to be reasonable cause? I rather like black and white law. Mr. Breithaupt's amendment seems to be directing this more to black or white.

Mr. Breithaupt: Am I correct that section 348 of the Corporations Act does not have that phrase in it? One wonders why it is put in here.

Interjections.

Mr. MacQuarrie: I just want a few examples so that we can judge, if you will, the effect of the deletion or inclusion of these words. Then we can judge which would be the best approach.

Mr. Williams: Mr. Chairman, regarding the last evening when this bill was under debate in the House and Mr. Breithaupt raised this question, the time since then has enabled us to pause and reflect on the point being made. It was not lightly that we concluded it would be unnecessary, and it is perhaps inappropriate to remove the clause whose removal is being requested by this amendment.

By removing that clause, you are imposing strict liability. Let me give you the example you are seeking as to why there is justification for retaining this clause in the section.

Suppose, for instance, unbeknownst to the officers of the company, the agent for service died the week before. Strictly speaking, they are in violation and would be subject to prosecution.

I would think, however, that there would be reasonable cause

there, if it came before a court for a judge to exonerate them in that given circumstance, where, with due haste, they did appoint a new agent but during an interim period of a week or two they were unaware of the fact that the agent had died.

If you apply the strict liability rule--which you will do here if you remove that discretionary clause and which, of course, we would assume a court of law would apply with an appropriate discretion--the judge would have no alternative but to convict and to impose a fine.

Someone, for whatever reason, might have said that they were in violation. Their agent had died two weeks earlier and they might have been unaware of the fact that the lawyer who acted for them might have been their agent as well. If, for some reason, somebody felt, "Let us go after them and have the ministry prosecute them," the judge would have no option but to convict.

More important, we are simply trying to be consistent here. The member for Kitchener will appreciate this because he was very much a party to the debate on the Business Corporations Act. I would remind him of the fact that this particular clause is used throughout the Business Corporations Act. We are simply trying to be consistent with what is provided in a main body of legislation.

For example, in the Business Corporations Act, "Every person who fails without reasonable cause to comply with subsection so-and-so, and without reasonable cause uses a list of holder securities in contravention of subsection so-and-so, or fails without reasonable cause to send a prescribed form or proxy"--of about 15 subsections under which a person could be found guilty, the phrase "without reasonable cause" is the qualifier that is used.

We are simply endeavouring to be consistent here, and, at the same time, even-handed in the application of the law.

Mr. Breithaupt: Would you refer to section 348 for me? I do not have a copy of the act in front of me.

Mr. Williams: I acknowledge that the words are not in section 348.

Mr. Breithaupt: They are not in that section?

Mr. Williams: We are adding this because we want to be consistent with what we have done in other, more current legislation dealing with corporations.

Mr. Breithaupt: This is to be considered as an improvement to get into a pattern of standard operations, rather than a particular attempt to make an exemption here from what is otherwise a general rule as it at least appears in the Corporations Act.

Mr. Williams: Certainly, in this section, you felt that, by using these words, the grounds on which one could be convicted

or charges laid are somewhat imprecise because of the use of this clause.

Mr. Breithaupt: Somewhat weakened, I felt.

Mr. Williams: Of course, the section is quite precise, but this qualifying clause, as I say, is put in with reason. It provides an element of equity and fairness, in circumstances that only a court of law itself could determine would have application. For this reason, the provision or the use of the clause "without reasonable cause" should remain in place, for the very reasons you have stated.

Mr. Chairman: Mr. MacQuarrie, have you anything further?

Mr. MacQuarrie: I have some problem. You gave us one illustration of the agent dying.

Mr. Williams: That is one that comes to mind, but I am sure there are others as well.

5:40 p.m.

Mr. MacQuarrie: I have some problem with deleting the words, particularly when we have not only a contravention of the act but a contravention of the regulations as well. When you have the regulations possibly prescribing certain times within which information is to be provided, and, through inadvertence or some clerical slipup, someone does not get it in in time, you have an immediate offence.

I can see it in terms of contravention of the act itself. I can see the deletion in terms of contravention of a condition of the licence. When we get into contravention of the regulations, which could change it every time you turn around, and impose some relatively insignificant onus on the corporation, yet you have technical breaches and are throwing them liable to the penalty. The judge or someone in his wisdom could make the penalty quite a bit less than the maximum provided in the act.

Mr. Breithaupt's remarks referred to particular situations, particular corporations and the rest of it. If that were to stand, really by deleting the words all you are doing is making them liable to a penalty. Is that not the case?

Mr. Breithaupt: Yes, it would be the case, I would think.

Mr. MacQuarrie: By leaving the words in, if they did have some reasonable cause, they could likely put that cause forward to the court.

Mr. Breithaupt: The thing that troubles me in this is we are told that part of the reason for the uncertainty as to how or whether to proceed on behalf of the ministry is based upon the terms that appear within a certain management contract. Those terms have to be considered. I suppose an opinion has to be obtained as to whether the terms of that contract are an attempt to avoid or evade Ontario law or whether through innocence,

activities have followed a reasonable business practice or at least one that should not attract such a serious penalty, which it could under this statute. I understand the difficulty the ministry has in trying to sort out intentions perhaps in this case.

Mr. MacQuarrie: I find some difficulty in extending this act to management contracts.

Mr. Breithaupt: That might be one of the reasonable cause pegs upon which a judge might decide that in the circumstances--for example, the matter of voiding a title--such a penalty would be far too extreme. That could well be the approach.

Mr. MacQuarrie: I was looking at the situation put forward by the Plaza 100 people as basically a question of validity of title. As to the management contracts between the owner and the management company, I do not think there is any prohibition against entering into the contract. There is a prohibition against their right to take action under the contract vis-à-vis each other, the contracting parties. Am I not correct in that?

Mr. Breithaupt: I think you are correct on that, but it would appear the concern is that certain wording in the contract--

Mr. MacQuarrie: I am not familiar with the background of that.

Mr. Breithaupt: Nor am I, but I gather the wording in the contract might allow one to be of the opinion that there was certainly no intention to avoid or evade this statute and, therefore, an opportunity to patch up the situation without the penalties that the act might bring would be "with reasonable cause." That may be; I do not know.

Maybe Mr. Wells could comment on this:

Mr. Breithaupt: Perhaps we could clear up this amendment before we have to leave in a moment or two.

Mr. Williams: Just before Mr. Wells leaves, regarding your observation about it applying to regulations as well, I just want to add that we have a dozen of them set out in section 25. If there is a technical violation of any one of those regulations, without that proviso any mean-spirited person who wanted to could bring an action against them that would be nonsubstantive in nature but technically correct and the court would be put in that bind of having to find them guilty.

Clearly, in complying with those regulations, one could very easily unintentionally vary to a point where he might be deemed to be in violation. I suppose those are other examples that one could use in making the argument.

Mr. Chairman: Mr. Wells, have you anything to add?

Mr. Wells: It seems to me that where the words "sufficient cause" are included, where we prosecute or choose to

prosecute under the act, then the onus will shift I think to the person who is accused to show reasonable cause for what that person is doing.

If the words are taken out, it really means it becomes up to me to start playing God as to whether or not a prosecution should be recommended to the minister. There may be a case where it is a very minor violation, such as the example given earlier where the agent may have died on a Saturday but the corporation is required to have an agent at all times for service. Obviously, the corporation could not possibly comply with the act until the next day that we are open.

In essence, that puts it back on me to play God in those situations where it might be easier, from our point of view if we want to go after corporations to say: "Okay, you are in violation. You show the court that you have a reasonable excuse for what you have done."

Mr. Breithaupt: In that case, presumably the excuse would have been made to you and you might well not have found that excuse satisfactory or appropriate.

Mr. Chairman: Mr. Breithaupt, we have another speaker, Mr. Jack Tse. We may not get through. I think this committee should adjourn now and we will continue with the amendment to section 20 on Thursday afternoon after routine proceedings.

The committee adjourned at 5:47 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

EXTRA-PROVINCIAL CORPORATIONS ACT

THURSDAY, MAY 3, 1984

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)

VICE-CHAIRMAN: MacQuarrie, R. W. (Carleton East PC)

Boudria, D. (Prescott-Russell L)

Breithaupt, J. R. (Kitchener L)

Cureatz, S. L., (Durham East PC)

Eves, E. L. (Parry Sound PC)

Mitchell, R. C. (Carleton PC)

Renwick, J. A. (Riverdale NDP)

Spensieri, M. A. (Yorkview L)

Stevenson, K. R. (Durham-York PC)

Swart, M. L. (Welland-Thorold NDP)

Williams, J. R. (Oriole PC)

Also taking part:

Williams, J. R. (Oriole PC), Parliamentary Assistant to the
Minister of Consumer and Commercial Relations

Clerk: Carrozza, F.

Staff: Yurkow, R., Legislative Counsel

From the Ministry of Consumer and Commercial Relations:

Wells, E. J. K., Director, Companies Branch

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, May 3, 1984

The committee met at 4:19 p.m. in room 151.

EXTRA-PROVINCIAL CORPORATIONS ACT
(concluded)

Resuming the adjourned consideration of Bill 5, An Act in respect of Extra-Provincial Corporations.

On section 20:

Mr. Chairman: We will call the meeting to order. I see a quorum.

I believe when we adjourned last week we were debating the amendment of the member for Kitchener (Mr. Breithaupt) to subsection 20(1). I am not sure, Mr. Breithaupt, whether you had concluded or still had a few remarks.

Mr. Breithaupt: Mr. Chairman, I made my remarks with respect to the view that the subsection was somewhat watered down in its effect by having that phrase in. I will not pursue the matter any further, having put it on the record.

Perhaps the debate on the subsection can effectively be completed with a comment from the ministry on its view of the situation. As I recall, they thought it was necessary to have that phrase. Perhaps the member for Oriole (Mr. Williams) or others might remind us of that view, and we can then proceed.

Mr. Williams: Mr. Chairman, I put forward what I thought was a reasoned argument for rejecting the proposed amendment in this instance, given that it moves away from the strict liability provisions that would otherwise prevail, and also to show consistency with what is done in the Business Corporations Act and other similar legislation which, as I pointed out and I think correctly, you, Mr. Breithaupt, had been a part of at that particular time.

While the Instant Hansard does not show the specific section I quoted from, I did give as an example a section in the Business Corporations Act which was riddled with the "without reasonable cause" clause. At that time I think I was perhaps referring to section 257 of that act, dealing with offences.

I was simply trying to make two points: that we were remaining consistent by retaining this provision and also providing an element of flexibility that we think is necessary and desirable, so there would not be the strict liability provision imposed that could unduly cause hardship in cases where it would not be appropriate.

Mr. Mitchell: Mr. Chairman, I recall part of the discussion the last time we sat with this bill. As I stated at that time, I see the deletion of these words removing from these corporations a right that almost each and every one of us as residents of Ontario enjoys. I refer to something that is in all our minds at this time: the filing of income tax. In the statement at the end of it, where you certify it is true, it is accepted that to the best of your knowledge it is true.

I do not see where "reasonable cause" is really much different. I agree you are trying to toughen it but I think there are occasions where certain things are done and that "reasonable cause" clause is important.

Mr. Cassidy: I am not aware there is a section of the Highway Traffic Act saying that every person who, without reasonable cause, exceeds 100 kilometres per hour is guilty of an offence, or whatever the limit might happen to be.

The limits are put into the law. It is up to the police to use their judgement on how they enforce it. We all know that if you go at 100.5 kilometres an hour on Highway 401 you are not going to get picked up; you probably will get honked at for going too slow. Certainly discretion is used in that case.

It seems to me the insertion or the maintenance of a clause here does not really cover the question of exercising discretion in prosecution. If someone says, "Look, we had an agent for service on Saturday, he or she died on Sunday and we could not get a new one until Wednesday," no prosecution is going to be put in for that.

Mr. Mitchell: It does not leave very much flexibility.

Mr. Cassidy: For that matter, even if one were put in, and there was room for doubt, the judge is obviously open to say there may be a technical offence here but there is no limit on the fine, and the judge can simply say to the police, "You should not have brought this case in."

If my friend from Carleton would like to change the Highway Traffic Act to say that you can, with reasonable cause, go faster than 100 kilometres per hour, then at least he would be consistent. But until he does that, it seems to me he should support the amendment put forward by Mr. Breithaupt.

The only thing I can see is that leaving these words in is a loophole. The government members are supporting it because they are told to by the parliamentary assistant and by the ministry, but it leaves a loophole which will not benefit anyone except people who are trying to get out from under the provisions of the law.

Mr. Williams: I know my friend is trying to provoke the parliamentary assistant, but he will not succeed in doing so.

Mr. Cassidy: I was not even directing my comments to you.

Mr. Williams: You suggested that I was giving directions to the members of the committee from the Conservative caucus. I am simply stating facts. I am not trying to persuade anyone with other than a persuasive factual argument. I am not citing as examples sections from the Highway Traffic Act relating to relevant legislation that deals with corporations. I suggest you may be talking about apples and oranges, but I am trying to talk about apples and apples.

Mr. Cassidy: I am talking about cars and corporations.

Mr. Williams: Within the purview of the laws of Ontario dealing with the management, control and supervision of corporations that are carrying on business, I am pointing out a consistency that would prevail with the continuance of this clause in this bill. It would match the parenting bills we have with regard to the Business Corporations Act and others.

Mr. Cassidy: It seems to me that ordinary people who drive cars are subject to much more stringent standards than corporations. That sounds like one law for the rich and one for the poor.

Mr. Mitchell: In rebuttal, I must point out that it is my understanding and knowledge of the Highway Traffic Act that, if one wants to use it, reasonable cause is fully allowed for. For example, if I remember the wording, there is one section that deals with passing on the highway which says that if you intend to pass you must do so in safety and clear back in as quickly as possible.

I may be paraphrasing, but when you are driving a car and you go to pass someone who may be driving at 40 miles an hour, how many times are you well in excess of the speed limit when passing him? I doubt very much if any police officer would ticket you for something like that because he would realize that in a situation such as that you were speeding for reasonable cause.

Mr. Cassidy: The law says you are not to exceed the speed limit.

Mr. Mitchell: What is being quite clearly stated here is--I still maintain we cannot take away a right that, in my opinion, exists for pretty well all of us in our walk of life. I think part of the problem people have in dealing with legislation is they find these conflicts between various pieces of legislation. The parliamentary assistant has said that what we are trying to do is to improve many of these pieces of legislation and bring them into conformity one with the other.

By leaving that clause in, I do not think we are weakening the intent of the legislation at all.

Mr. Breithaupt: I can see that the minister's desire to avoid a rather strict compliance has some merit in the example that has been given where an agent dies and obviously there is no one for service the next day, but I feel that the phrase "without reasonable cause" is somewhat too broad. If an alternative could

be proposed, I would be more than happy to consider it.

I note that the comment made by Mr. Wells last week, that he was not keen to play God in these circumstances, might be a certain tongue-in-cheek situation, because even in the legislation he has to decide as part of his responsibilities what constitutes reasonable cause, so you are involved however you deal with the matter.

Whether an infraction has taken place in that context is a judgement call you are going to have to make in any event. However, we have placed our views on the record and I think we can proceed.

4:30 p.m.

Mr. Eves: Correct me if I am wrong, Mr. Wells, but I believe you indicated last week that this exact wording, "without reasonable cause," is wording that is used in other statutes and that the ministry is trying to be consistent in its treatment of the issue here; is that correct?

Mr. Wells: Yes.

The Vice-Chairman: Is there any further discussion on subsection 20(1) and Mr. Breithaupt's amendment? No further discussion? Those in favour of the amendment? Those opposed?

It is a tie. The chairman casts his vote against the amendment.

Motion negatived.

The Vice-Chairman: Shall subsection 20(1) carry? Carried.

Mr. Breithaupt moves that subsection 20(2) be amended by deleting the words "and every person acting as its representative in Ontario".

Mr. Breithaupt: Under this section the directors of an extraprovincial corporation and its agent can only be convicted of an offence, first, if the extraprovincial corporation is guilty of that offence and, second, if the directors and agents "authorized, permitted or acquiesced to" the offence.

In my understanding, the ministry's rationale for adding these two provisos to the legislation is somewhat unclear, because I think these serve as hurdles that would have to be overcome before an agent could be convicted under the proposed act. The wording in the section creates a potential loophole, in my view, in that it provides that an agent could not be charged until and unless the extraprovincial corporation had been convicted.

By not conducting its own business affairs in Ontario, an extraprovincial corporation could not be found guilty under this subsection and, as a consequence, the agent would also be immune. Even if the extraprovincial corporation were found guilty, the

agent would have to be knowingly guilty of the same offence before a conviction of that agent could be obtained.

I am sure the ministry is well aware that it would be extremely difficult, if not impossible, to charge and convict an extraprovincial corporation. As a result, I think it is essential that the justice system be designed in such a way as to allow for the rather swift charging and conviction of any agent representing an extraprovincial corporation that is unlicensed.

I draw to the parliamentary assistant's attention section 339 of the existing legislation, which states, "No person, as the representative or agent of or acting in any other capacity for an extraprovincial corporation, shall carry on any of its business in Ontario unless it has received a licence."

In subsection 20(2), as it now stands, I think the waters are somewhat muddled, since the penalty provisions of subsection 20(2) can be interpreted so as to include the agent. There is, I suggest, no need to create confusion by placing more restrictive conditions on agent convictions through subsection 20(2). I think the references to agents should be removed from this subsection.

I recall that Mr. Wells's comments last week were to the effect that agents were covered under subsection 1. If that is the case, then it would seem logical to me that the removal of the phrase in subsection 2 would be appropriate. I would appreciate hearing from Mr. Wells how he views the argument I have put.

Mr. Wells: Under subsection 4(2), which is similar to the wording in the Corporations Act, "No extraprovincial corporation within class 3," which is a foreign corporation, "shall carry on any of its business in Ontario without a licence under this act to do so, and no person acting as representative for or agent for any such extraprovincial corporation shall carry on any of its business in Ontario unless the corporation has a licence under this act." We start from there.

In my view, if a representative in Ontario does contravene subsection 4(2), then that agent could be charged directly under subsection 20(1). In other words, subsection 20(1) stands on its own, separate from subsection 20(2). There are other sections in this bill where the extraprovincial corporation may commit an offence under the act, for instance, in section 19, if it fails to have at all times an agent for service.

If the extraprovincial corporation in that case is charged with an offence and is convicted, if the representative or agent for that corporation acquiesces in or permits that offence, that agent can be guilty of an offence, even if he is not a party to the original offence. Do you follow me?

Mr. Breithaupt: I think so. It is an involved area.

Mr. Wells: Yes, but subsection 20(2) nails a resident agent for someone else's offence. If an extraprovincial corporation is convicted of an offence under the act, then the resident agent can also be convicted merely by acquiescing in that

offence pursuant to subsection 20(2), but if the resident agent commits an offence directly under the act, then we would proceed under subsection 20(1), not subsection 20(2), and prosecute that individual or corporation directly.

Mr. Williams: Subsection 20(2) is a catch-all provision. It broadens the net, which you were talking about the other day. Rather than being restrictive and muddying the waters, as you suggest, it simply provides another way in which individuals can be brought to task if the company itself is prosecuted and found guilty.

They may want to broaden that base and, given the circumstances in which the company had committed an offence, to proceed against the representatives, which subsection 20(2) clearly provides for, even though, as Mr. Wells has said, they may not have been directly involved in the situation that brought about the violation and we may not be able to prove they have directly done so.

This matter of acquiescence, authorization or awareness, would certainly ensure they did not go scot-free. They would have to handle themselves in discharging their responsibilities to the company in which they have some interest judiciously, so they did not put themselves in that situation. Subsection 20(2) would give us a broader base from which we could proceed against individuals as well as corporations.

I certainly agree with Mr. Wells's interpretation that subsection 20(2) does not set up an element of exclusivity, whereby we have to get a conviction against the corporation first. Subsection 20(1) permits us to proceed against the individual in our own right, without proceeding against the corporation if the circumstances warrant it.

4:40 p.m.

The Vice-Chairman: I have a little trouble, if I may be permitted to ask a question or two, with the word "acquiesce" in respect to a representative in Ontario who might quite innocently become tied in with a company that has committed an offence under subsection 20(1), possibly without full knowledge of the facts or circumstances or conditions and quite innocent of the whole thing. I question the meaning of the word "acquiesce" and the application of the word as it is contemplated in the section.

Mr. Breithaupt: Indeed, all he might know about some event is what he reads in the paper that day and he would have no knowledge, no background or personal experience of it.

The Vice-Chairman: I can see "authorized, permitted" and so on, but this could be a person who serves no other purpose than acting as a representative for service of documents for an extraprovincial corporation, who otherwise has nothing to do with their day-to-day business operations. We need to have this acquiescence interpreted in some way or another as to what it means and what sort of situation it is intended to cover.

It certainly is not as definitive a word as authorized or permitted. I suppose a person can acquiesce by doing nothing.

Mr. Breithaupt: Why would you even suggest that anyone would want to be an agent and put himself in that position where from the simple fact of being the agent he may achieve a penalty as a result of something over which he has absolutely no personal knowledge and certainly no control? I suppose his only way out would be to have resigned the day before.

He may well read in the morning press about some event, some charge or whatever and be served that day, or however it might go, and have no opportunity to even know about the background. It is an interesting point. Why do they use that word, where an agent is suddenly being condemned for whatever possible sins the principal may have committed?

Mr. Williams: Is there not a counterbalance there? In the debate we had a few moments ago about the use of the term "without reasonable cause," there is the offsetting balance. While "acquiesce" is a very broad and somewhat nebulous term and I guess introduces an element of reverse onus--

Mr. Breithaupt: I could agree with you--

Mr. Williams: --the "without reasonable cause" clause is an offsetting factor and I think helps to justify the continuance of that--

Mr. Breithaupt: That is fine for the authority for the permission, which is referred to, who "authorized, permitted" it. Those are positive acts, but acquiescence is neutral.

Mr. Williams: That is true.

Mr. Breithaupt: Therefore, "reasonable cause" would not protect, would it?

Mr. Williams: It involves some activity. To acquiesce, may not be physical in nature, but some form of action--

Mr. Breithaupt: I find it very difficult to nail someone for an acquiescence, when they have no control over something.

Mr. Williams: It might be an act of omission or commission, but some kind of act. Perhaps Mr. Wells would like to speak to that, just to elaborate.

As I said earlier, we think it broadens the base in the net and ensures we can proceed against the individual as well as the corporation. Mr. Wells, you might want to comment further.

Mr. Wells: Just speaking for myself, I do not know of any case law defining "acquiesce" in terms of a penalty provision like this. It seems to me you cannot acquiesce in something if you have no knowledge of it.

It seems to me this section is designed so where, in fact, you have knowledge there is a breach of the act or something like that, if you fail to do anything to correct that, you are acquiescing in a default. I think that is what this section is getting at.

Mr. Breithaupt: Or you are knowledgeable that such a default or problem has arisen or would arise from a certain action, and you simply have not done anything about it, one way or the other. You certainly have not authorized, and you have not permitted, but as an agent, presumably you have some responsibility to not knowingly get your principal in difficulty, some duty to not allow the law to be broken or flouted and then hide behind that phrase. It makes a case, I guess.

Mr. Chairman: Is there anything further on subsection 20(2)?

Mr. Williams: I have just one further observation, Mr. Chairman. This is related to the general observations that Mr. Breithaupt made earlier on the various areas where he had indicated he was going to ask for specific amendments.

The one I found most difficult to grasp--and maybe I was not getting a clear understanding of what you were driving at, Mr. Breithaupt--was that I truly could not appreciate the observation that you felt it would be inappropriate to include the agent in the subsection and that somehow he should be exempted or exonerated from the type of action that could be taken against the director or officer of a corporation.

I do not know why you would want to exclude an agent and give that person some form of immunity of which the director or officer of the corporation would not have the benefit.

Mr. Breithaupt: I had simply made the comment and followed through on the basis of my understanding of what Mr. Wells had said in so far as the inclusion of agents was concerned. I have felt that conviction is possible only if two things happen: first, if the extraprovincial corporation is guilty of the offence; and second, if the directors and agents authorized, permitted or acquiesced in the offence.

I wanted to make sure there was an opportunity to obtain conviction on one or the other of those occasions rather than the necessity of having to prove both. Now the explanation has been given; we will have to see how that develops.

Mr. Cassidy: I just wanted to say that I would agree with the arguments made by my friend the member for Kitchener with respect to the removal of these words. As I recall from the earlier debate, this clarifies the bill as proposed by Mr. Breithaupt because of the fact that the previous sections cover any person who was acting as an agent or representative.

By putting it this way you make an AC-DC situation, which once again could be seen as creating a loophole or a way of softening penalties on behalf of the corporation. I do not think

we should be drafting legislation in the province that provides loopholes; I think there are enough loopholes in them already.

I see that the minister's parliamentary assistant is agreeing with me absolutely.

Mr. Williams: --I did not realize you were in the room when Mr. Breithaupt was giving his reasons.

Mr. Cassidy: I knew them by osmosis.

Mr. Williams: I see.

Mr. Chairman: All those in favour of the motion?

All those against?

I declare the motion lost.

Mr. Cassidy: I counted three to two in favour of the motion, Mr. Chairman. My friend Mr. Newman was having difficulty lifting his right arm.

Mr. Chairman: All right. We will have the vote again.

Motion negatived.

Section 20 agreed to.

4:50 p.m.

On section 21:

Mr. Breithaupt: I have an amendment to propose to subsection 21(1). Mr. Chairman, you are aware that this subsection deals with one's ability to maintain an action before the courts.

With respect to the Plaza 100 situation, my understanding is that the subsection enables Deerhurst and its agents to comply with the new act and to be absolved from any infractions of the existing law. If the subsection is not deleted, then Deerhurst and its agents could not be prosecuted for breaching the former Corporations Act.

Mr. Chairman: Mr. Breithaupt moves that subsection 21(1) of the bill be amended by inserting the words "or by part VIII of the Corporations Act or a predecessor thereof" after the word "act" in the third line.

Mr. Breithaupt: I think this proposal would bridge the transition between that part of the Corporations Act and the new legislation. Perhaps the comments of the ministry will clear up this matter.

My understanding is that if Bill 5 passes as it is, Deerhurst can get a licence under the new act. Under this section, it will have corrected the default and will therefore not suffer

any of the consequences in the courts or before other tribunals to which in future the new act might make it subject.

Mr. Williams: You are right in your last observation, Mr. Breithaupt. I would take it the intent of the amendment would be to cast any corporation not in compliance at the time part VIII was repealed into a state of purgatory forever and a day, in the sense it would have no way of correcting the wrong that existed at the time. This is what I took from your comments.

It seems to me that under the new act, if a corporation would be permitted to correct a default--that intention exists under the existing legislation--we would be putting the corporation in no better or worse position under the new wording than prevails at present.

I can assure you this is the single most important consideration in the amendment we have before us, because it certainly goes to the heart of the issue and concern that Mr. Latrémouille and the people from Plaza 100 have of whether their position will be prejudiced in any way whatever by virtue of the enactment of this legislation.

Respectfully I say to you, and I am going to have counsel comment on this, that in assessing this very carefully with our counsel and also the legislative counsel, I think what you are suggesting would not occur by virtue of enactment of this legislation. With part VIII it is felt the rights that existed, to which I think Mr. Yurkow made reference the other day, are protected.

As I understand the law, because they have commenced an action now pertaining to matters that existed at the time of the old legislation, before or even after the repeal of part VIII, they would still be entitled to do so. I believe it was section 14 of the Interpretation Act that was relevant and to which Mr. Yurkow made reference. He may want to verify this.

Mr. Breithaupt: This is the important thing that I certainly want clarified. It is clear Deerhurst has not had a licence since 1982 and it would appear it does not particularly have an interest in obtaining one or doing anything about it.

Mr. Williams: Let me just cite case authority that I think is germane to this discussion and is critical to this whole matter before us today, from the point of view of Plaza 100.

Mr. Wells drew to my attention a case I think has application here, and that is the Regina versus Coles case in 1970, 1 Ontario Reports, page 570, Court of Appeal, in which Mr. Justice Bora Laskin had stated there was no doubt of the propriety of a prosecution under section so-and-so of the repealed act--they were talking about the Securities Act in that case--"although instituted after the repeal, the concluding provisions of section 14(1) of the Interpretation Act prolong the life of the repealed act in respect of an infraction which took place during its currency and is prosecuted within the prescribed limitation."

Mr. Breithaupt: That is the important thing I want to ensure is clearly understood by all of us at this point. I appreciate the reference made to the Interpretation Act by the parliamentary assistant and also the case he has cited.

Mr. Williams: I do not know whether Mr. Yurkow or Mr. Wells would care to comment further. They are men learned in the law and I would like them to confirm the understanding I have, which I think is clear cut and precise.

Mr. Wells, do you have anything further to add? Are you satisfied?

Mr. Wells: I really have nothing further to add, unless the member has any questions.

Mr. Chairman: Any further discussion on this section? Sorry, Mr. Yurkow.

Mr. Yurkow: It is my very strong opinion that the addition of these words does not affect the meaning of the section, and to put them in is strictly redundant.

Mr. Chairman: All those in favour of Mr. Breithaupt's motion?

Mr. Cassidy: I am actually just going to accept the words of honourable counsel on all those kinds of things this time.

Mr. Chairman: All those in favour of Mr. Breithaupt's motion? Against?

Motion negatived.

Section 21 agreed to.

On section 22:

Mr. Williams: Mr. Chairman, I have a motion I would like to introduce with regard to clause 22(b). I would like the clerk to distribute it.

It is a matter of grammatical correction only; a matter of syntax, if you will. What I would ask the members of the committee to consider, and perhaps Mr. Eves or Mr. Cureatz could move it at the appropriate time if there is no difficulty, is to the effect that clause 22(b) be amended by striking out the word "and" at the end and inserting in lieu thereof "or."

The use of the words "and" and "or" in the appropriate or inappropriate places has caused more difficulty and trouble for legislative draftsmen and legislators over the years than the use of any other words. It appears in this instance it would be more appropriate that the word "or" be used rather than the word "and."

Mr. Breithaupt: If you wish to have those three groups, each with certain powers, the word "or" is the correct word.

Mr. Williams: Perhaps one of my colleagues could so move.

Mr. Chairman: Mr. Eves moves that section 22 of the bill be amended by striking out "and" the end of clause (b) and inserting in lieu thereof "or."

Motion agreed to.

5 p.m.

Section 22, as amended, agreed to.

Mr. Breithaupt: The only other item was a reference with respect to section 26. With the discussion we have had under the reference to section 14 of the Interpretation Act, it is not necessary to consider that point any further. Therefore, I have no further comments with respect to the bill.

Sections 23 to 28, inclusive, agreed to.

Mr. Chairman: Before we do the final bit with the bill, I have not given the parliamentary assistant a few minutes to make his views known. We had the witnesses and he asked me if I could let him have a few minutes to clarify the record. Would that be agreeable to the committee?

Interjection.

Mr. Chairman: When we had the witnesses in front of us, I neglected to give Mr. Williams an opportunity to respond. He was wondering whether he could have a few minutes to respond to some concerns he had.

Mr. Williams: It is just a matter of speaking to some of the concerns that have been expressed, because it had been suggested in some part of the presentation that the ministry, because it was taking some time to assess the ability to take action against the defaulting company, was insensitive to or uninterested in the legitimate concerns of Plaza 100.

I simply want to give assurances here, and to put on the record the fact that the concerns expressed by the witnesses are ones that have been, and continue to be, shared by the ministry. I think about six points were made in a detailed and well-presented brief by both witnesses before us.

I hope it has been determined from the discussion on a clause-by-clause basis. I wanted to assure you that section 346 was not being modified, as expressed in the concern of Mr. Latrémouille, and that what was in that section was preserved under the new section 22.

As to the matter of section 349 being more direct than the new section 21, I think we addressed that at some length in the debate on clause-by-clause. I think it was made clear, I hope to the satisfaction of the witnesses, that the amendments were not being made to the prejudice of their position, or of any other company that would be an extraprovincial corporation, or any

people having any dealings with an extraprovincial corporation.

We want to be absolutely satisfied and are satisfied. As our first witness suggested several times, the only modifications they would be asking for would be if it was determined their position had been weakened. They were not necessarily asking for more than existed at the time. They just wanted to be sure their position was not being worsened.

I can assure the committee that the ministry shares those concerns. This is why we have appreciated their coming before the committee to review these matters with us. The member for Kitchener has clearly identified the sections that pertain to some of the concerns that have been shared both in House debate and by the first witness in meetings with our counsel at the ministry offices.

I know Mr. Wells has worked closely with the witness to assure him this legislation will not put the people the witness represents, the tenants of Plaza 100, in a prejudicial position. That is why I felt it had to be clarified that this legislation was not intended in any way to interfere with the normal proceedings that were occurring between the tenants and the landlord of that building.

It is a much more broadly based piece of legislation designed for entirely different purposes. It just so happened that the circumstances that prevailed at the time with this company had some bearing on the situation. I think the other matters the witness so ably spoke to at the time have been addressed in our clause-by-clause deliberations this afternoon, and I hope they have dispelled any of the concerns that existed at that time.

I certainly appreciate the input from the members of the committee, so we can address these matters directly and in detail. I hope in so doing we will have not only better legislation as it pertains in a broader way to extraprovincial legislation, but also the witnesses can leave feeling their concerns have been addressed here today.

Bill, as amended, ordered to be reported.

Mr. Chairman: Before we adjourn for the day, I have a request I would like to take up with the committee. I have been approached by the staff of the Minister of Consumer and Commercial Relations (Mr. Elgie). Evidently the minister will be addressing the trust companies some time next weekend and he was wondering whether the committee would agree to let him have a copy of the report we have sent to be printed, because he would like to make some comments on it. I thought I should take it up with the committee. By the way, it will take two weeks to print it.

Mr. Elston: Would that not be rather unfair? I mean the report is made to the House and I do not think it is appropriate the minister should have something that is not public, so he can make comments upon it. I think the report has to be made to the Legislative Assembly.

Mr. Chairman: Fine. It was just a request.

Mr. Cassidy: I feel the same way. I have not heard the minister offering to give us his speech a few days in advance, so we can comment on it.

Mr. Elston: It is just a feeling I have with respect to our obligations and responsibilities. We are directed, as I understand it, to report to the Legislative Assembly for its comment rather than to the minister. I think it is more appropriate that we fulfill our mandate in that event. If the minister wants to go and seek a ruling from the Legislative Assembly to free up the report, I think that may be the proper place for him to make a request.

Mr. Chairman: It was just a request of the committee. Whatever the committee decides is fine.

Mr. Breithaupt: I think it would be best if we followed the procedure of making our report to the Legislature to be dealt with as the Legislature sees fit.

Mr. Chairman: Any other comments?

Mr. Cureatz: It is obvious we do not have the unanimous support of the committee.

Mr. Chairman: Agreed.

The committee adjourned at 5:10 p.m.

Lacking J-47-55, 1984.

128N
C14
S78

J-56



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

ORGANIZATION

THURSDAY, AUGUST 16, 1984

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)

VICE-CHAIRMAN: MacQuarrie, R. W. (Carleton East PC)

Boudria, D. (Prescott-Russell L)

Breithaupt, J. R. (Kitchener L)

Eves, E. L. (Parry Sound PC)

McLean, A. K. (Simcoe East PC)

Mitchell, R. C. (Carleton PC)

Renwick, J. A. (Riverdale NDP)

Spensieri, M. A. (Yorkview L)

Stevenson, K. R. (Durham-York PC)

Swart, M. L. (Welland-Thorold NDP)

Williams, J. R. (Oriole PC)

Clerk: Carrozza, F.

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, August 16, 1984

The committee met at 10:04 a.m. in room 151.

ORGANIZATION

Mr. Chairman: I see a quorum. We are here just for an organizational meeting and basically to talk about the Ontario Police College at Aylmer. As you are well aware, we were planning to visit Aylmer during the last two weeks, but unfortunately, because the college is closed all of August, nothing is going on. Mr. Shawn MacGrath suggested that this is a facility the justice committee should see and he suggested some time in September.

While we were over in Mr. McGrath's office, we had more or less tentatively decided we would like to go the last week of September, about the 25th. Is that right, Franco?

Clerk of the Committee: The 26th.

Mr. Chairman: September 26, 27 and 28, which would--

Mr. Breithaupt: The 25th, 26th and 27th.

Mr. Chairman: September 25, 26 and 27, Mr. Breithaupt says. He has his calendar there.

I have taken the preliminary steps of talking to Mr. Wells to get us the permission to do this particular issue. I thought he would have got back to me by today, but he suggested there would not be any problem with it. I would ask Mr. Breithaupt and Mr. Renwick to talk to their House leaders, just to explain the situation the way it was, in order that we may get the permission to visit this facility in September.

The last two or three weeks have been very fruitful for those of us who went to the fire college as well as doing the visiting here--toxicology and biology in the forensic science centre. Some time in the future, we might visit the Ontario Provincial Police headquarters here. I do not know whether there is much to see on Jarvis, but possibly that would round it out for us. Perhaps we could do that some time in the future--if we are here in the fall--prior to an election. If not, maybe that will be a subject for a new committee.

Is there anything anyone has to say about the trip? Does the date in September suit everybody?

Mr. Renwick: It suits me.

Mr. Breithaupt: It is fine with me.

Mr. Eves: I am going to be in public accounts at the same time, but I am sure we can find a sub or whatever.

Mr. Chairman: My problem is that I too will be on public accounts, plus I have a few commitments that week, which would make it impossible for me to go; but I am sure Mr. MacQuarrie will go, and maybe we can get another substitute to go.

I will press Mr. Wells, and as soon as I hear anything definite I will send a little note to your offices as to confirmation of the fact.

Is there anything else for the good of the order?

Mr. Renwick: The other thing--and I do not know what the answer to it is, but I know Mr. Breithaupt has been helpful about it for a long time--is that we have two big sets of estimates ahead of us, assuming we come back, and it is a matter which this committee should think about in any event. Mr. Breithaupt has always been most helpful in trying to put up a time allocation business for it.

Perhaps a member from each of the parties--perhaps a subcommittee--might very well think about an informal time allocation for the estimates of both the Ministry of the Attorney General and the Ministry of Consumer and Commercial Relations so that we do touch on all of the various areas rather than get jammed up at the end.

I know all the arguments that you cannot be too rigid about it and all the rest of it, but I would think that if the permanent members of the committee were to agree on an informal time allocation, the chairman would know that he could adjust the run-in to it without running into a lot of flak about it when it came.

It struck me again that we should continue to try to work along those lines, because actually a number of the places we visited recently get very short shrift in estimates mainly because either people do not know anything about them--which was not the case with the places we visited--or there is never any time and they are jammed up at the end. In the Ministry of the Solicitor General estimates, often the Fire Marshal does not get very much time. Certainly, the Ontario Provincial Police does not get very much time.

I would like to see if in an informal way we could not experiment a little bit this fall on a better ordering of the estimates business of the committee. That was the one matter I wanted to raise.

Mr. Chairman: I think we could explore the possibility. There is certainly no problem. All it would really mean is that each party would have to make its particular members aware as to what we are proposing to do and to try to stay within those parameters as much as possible.

Mr. Breithaupt: That is really what we have been doing. The division of time is difficult to accomplish until after the opening statements are made, because you never know whether they are going to be half an hour each or perhaps the minister will

read for an hour and a half; that has happened too. Then all these general issues that are usually discussed by the two critics for the ministry have all to be answered or considered further or discussed back and forth. So five hours of the 20 or 18 or 23, depending on what we have, go by very quickly.

I am certainly happy to attempt to work out these divisions as I have done because I think it gives a better opportunity for the public servants to know when they are likely to be there so they are not sitting about. For our colleagues who might have an interest in just one particular question or area, they know they can come in that afternoon when we are doing a certain thing. Sometimes that works and sometimes it does not, but I am quite happy to try again and we will work together to try to allocate the time.

Mr. Renwick: I do not know what the response of the ministers would be on it, but I would certainly be prepared to agree on some appropriate time allocation for the opening statements as well.

Mr. Breithaupt: I would be very pleased to do that. I think if we just go over things that are going to be discussed because we fear the time may not be there at vote 7 or whatever it may be, if we could all agree to briefer opening statements, that would be a great advantage to the whole system.

Mr. Renwick: The other thing is it is helpful to members of the staff of the ministers if they do not have to be sitting around here.

Mr. Chairman: For three days.

Mr. Renwick: Yes. If necessary, we can simply say we are not going to start a new vote even though there may be a few minutes left, as long as the time does not run against it. For example, if such-and-such a vote was going to be considered tomorrow and we reached it late today, it would seem to me we should not start on that vote until the appropriate people are present.

Mr. Breithaupt: There is always another general issue or two that we can discuss with the minister for the 15 minutes to fill in the pattern. I think it could work.

Mr. Chairman: Okay. We can certainly try. I guess the objective is to get the opening statements down a little bit. If they agree, the rebuttals will be that much shorter, so that would give us more time allocation.

Mr. Renwick: Then we would not feel we had to cover other votes and so on in our opening statement, but we could highlight more. From my own point of view, I would think maybe 15 or 20 minutes would be an adequate length of time. The minister may want half an hour or something like that.

Mr. Breithaupt: A division such as that would be fine with me.

Mr. Chairman: I will certainly approach the Attorney General (Mr. McMurtry) and the Minister of Consumer and Commercial Relations (Mr. Elgie).

Mr. Renwick: We want to be a little bit more orderly without being rigid.

Mr. Chairman: That sounds reasonable.

Mr. Renwick: Since we have started off on this tack, at some point I would not mind going to the Canadian Police Centre in Ottawa.

Mr. Chairman: Is that the Royal Canadian Mounted Police Centre?

Mr. Renwick: It is called the Canadian Police Centre.

Mr. Breithaupt: I believe it is run by the RCMP. It runs courses open to a broader range.

Mr. Renwick: I think it is a co-ordinate course.

Then there is a special branch of Statistics Canada that deals with justice statistics in all their aspects. If we went to Ottawa, we might at least meet with the people who could explain to us what the statistical world is about in the field of justice, along with a visit to the Ontario Provincial Police headquarters.

Then, perhaps next winter or a year from now, we might also tie that in with a visit to the Federal Bureau of Investigation place in Virginia.

There may be a little thinking along those lines. Those would be things that I would be interested in.

Mr. Chairman: We can certainly look into the Ottawa trip as to--

Mr. Renwick: Or the world, depending on how the world turns out; maybe in January or February we could do that.

Mr. Chairman: That might be a good idea for the committee--

Mr. Breithaupt: If you were considering a trip to the Federal Bureau of Investigation centre, say, it may be that Sean MacGrath could inform us of a state police college or facility that might be a worthy thing to make it a decent sort of week's--

Mr. Cureatz: What was the state where the three firemen or police (inaudible)? Someone mentioned--

Mr. Chairman: Bob MacQuarrie was more briefed on that. It was one of the New England states.

Mr. Breithaupt: It could be one of the smaller ones in population. In any event, not that we travel just for the sake of

it, of course, but I think if we were to go, then two or three locations to make it a worthwhile four days, or however many it might be, would be a suitable package to put before the Board of Internal Economy.

Clerk of the Committee: Would you consider the one at Prince Edward Island?

Mr. Chairman: Well, the one in PEI is basically what we do; they train working policemen. I think we will pretty well get that here.

Clerk of the Committee: What about the Royal Canadian Mounted Police centre in Regina?

Mr. Chairman: I do not know what they do in Regina.

Mr. Breithaupt: That is recruit training again.

Mr. Chairman: Yes. That is recruit training again. I think that if we could get a package together to do Ottawa and Washington, sort of a little bit of a tour, that might give us a little bit more of an advance. I do not see our seeing repetitious things, because police training is more or less basically standard outside of a few quirks.

Mr. Renwick: The basic training does not alter a hell of a lot; at least I do not think so.

Mr. Chairman: All right. We will look into that and I will report back to you in the fall, if we are here in October, as to what we possibly could set up. If we are back, we could possibly think of the winter break during which to make this trip.

Mr. Renwick: Would you be good enough to do a preliminary allocation of time on those two estimates?

Mr. Breithaupt: I would be glad to, of course, when we know what is happening.

Mr. Renwick: Yes.

Mr. Chairman: All right. We will look into that aspect of it too; and if we cannot do it that way, that way we will not have a few civil servants waiting for days sometimes--

Mr. Breithaupt: I think it has worked out fairly well.

Mr. Renwick: If I wanted to make a 15-minute statement but actually had more material--in other words, if I had a written brief of some sort but wanted to highlight what I wanted to say--I do not think there is anything that would prevent, by resolution of the committee, the whole of my statement being put into Hansard so that I would just give a highlight statement of 15 minutes or whatever it was, not from the point--

Mr. Cureatz: Printed but not read?

Mr. Renwick: Right.

Mr. Breithaupt: I do not think our system allows that kind of an insert; it has to be the words as they are said. But even if one does highlight, it has gotten to the point around here where a ministerial statement will be a good hour or so and it will give us the history of the Ontario Securities Commission and everything else.

Mr. Renwick: We do not need it.

Mr. Breithaupt: I do not think we need that sort of thing. I would think that the Attorney General, in making an opening statement, could highlight the fact that we have got, let us say, a new family court organization in Hamilton when that was the case, and give some comments on that, because that is a particular project which this year has taken a lot of time, a lot of staff and we are happy to see the way it is going, and such and so. But in going through every vote and just to go on and on when those things should more likely be considered under their particular votes, we are getting to the stage where almost everything is getting discussed around here on the first vote because there may not be time.

If we could structure it a little more crisply, I think we would do ourselves an advantage.

Mr. Chairman: We will certainly make the effort.

Mr. Renwick: It is certainly easier for the critics to deal that way, because then they do not have to feel they have to be engaged in one-upping each other to get everything in and so on.

Mr. Chairman: Sure.

Mr. Stevenson: I would certainly agree with the basic approach that is being taken. As a matter of fact, when I first came down to Queen's Park I was rather surprised by the lack of structure or orderly progression of estimates, if you will, in the various committees I have sat on. However, Mr. Chairman, I think you should probably bounce off the two ministers what they think of it. They may have some important issues in their own particular ministries that they do want to spend some time on, although I quite agree that not only ministerial statements but sometimes opposition critics' opening remarks carry on and on as well.

Mr. Breithaupt: Sure they do, in the absence of thinking you might not get to vote 8 or whatever.

Mr. Stevenson: That is true.

Mr. Breithaupt: If we all just backed off a bit, the thing might flow much better.

Mr. Stevenson: I quite agree. If we could allocate the time for specific votes, we would be far better off.

Mr. Chairman: That is fine. We know what you want. We

certainly will try to make the attempt to make it happen.

If there is nothing further, gentlemen, thank you for coming on this informational trip that we have had to the various departments. Have a nice summer and we will see you all in the fall, hopefully, one way or the other.

The committee adjourned at 10:21 a.m.

Lacking J-57-73, 1984.

A20N
C14
-578

J-74



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

THEATRES AMENDMENT ACT

WEDNESDAY, DECEMBER 5, 1984

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: MacQuarrie, R. W. (Carleton East PC)
Conway, S. G. (Renfrew North L)
Cureatz, S. L., (Durham East PC)
Elston, M. J. (Huron-Bruce L)
Eves, E. L. (Parry Sound PC)
Mitchell, R. C. (Carleton PC)
Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Swart, M. L. (Welland-Therold NDP)
Williams, J. R. (Oriole PC)

Substitution:

Kells, M. C. (Humber PC) for Mr. MacQuarrie

Also taking part:

Allen, R. (Hamilton West NDP)

Clerk: Carrozza, F.

From the Ministry of Consumer and Commercial Relations:
Crosbie, D. A., Deputy Minister

Witnesses:

Zaluder, J., President, VTR Productions Ltd.

Borovoy, A., General Counsel, Canadian Civil Liberties Association

Rutherford, G., Citizens Against Violent Pornography

Sommers, Dr. F., Vice-Chairperson, Section on Sexology, Ontario
Psychiatric Association

From the Ontario Film and Video Appreciation Society:

Gronan, A.

MacDowall, C.

Poole, D.

Hoffman, J., Village Video

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, December 5, 1984

The committee met at 10:05 a.m. in room 151.

THEATRES AMENDMENT ACT

Consideration of Bill 82, An Act to amend the Theatres Act.

Mr. Chairman: Ladies and gentlemen, I see a quorum. We are here to deal with Bill 82 and to hear public presentations.

Just as a matter of note, the minister regrets that a long-standing previous commitment made it impossible for him to be here today. He will, however, be with us here tomorrow and Friday, I believe. In the meantime, we have his parliamentary assistant, Mr. John Williams, here with us as well.

Mr. Williams: Along with the deputy minister.

Mr. Chairman: I am sorry. Along with the deputy minister, Mr. Crosbie.

VTR PRODUCTIONS LTD.

Mr. Chairman: The first group is VTR Productions, and Mr. Jerry Zaludek.

We have given each member a schedule that we would like to adhere to, if we could, and that would give us approximately a half-hour for each of the witnesses. Mr. Zaludek, if you have an oral or written presentation, would you begin?

Mr. Zaludek: My presentation is purely oral, and I will not take half an hour. Let me introduce myself. I am president of VTR Productions, the largest duplicator of movies in Canada, duplicating for companies such as Metro-Goldwyn-Mayer, Paramount, the MCA Home Entertainment Group, and so on--just the major ones.

I am also president of CTA Video Distributors Ltd., which is certainly Ontario's largest distributor in the retail market. We are also a major shareholder of a national distribution company. That gives you some of the background.

Our position on the matter is that we do not believe in censorship, in the sense of the word. We do believe in a rating system for movies. It is very important, from the consumer's point of view, that he have a knowledge of the product he is obtaining. We also believe that there should be a cutoff level where certain movies are purely banned. Of course, the hard point is deciding where that level is.

I think a good system has to be operated, preferably under federal rather than provincial jurisdiction because of the flow of materials across borders--if there are such things. It should be a

strict, hard, written method of rating, if that is possible.

We have now dealt with this matter with the Ontario Board of Censors, the Royal Canadian Mounted Police, and the various departments and levels of the police force, including Project P. There has been a lot of discussion with them over the past five years in which we have been involved.

No one has come up with a method to date, but we do support it, and we do feel strongly that it is important to have a universal rating system. That is all I have to say, gentlemen.

10:10 a.m.

Mr. Williams: Just a point of clarification, Mr. Zaludek. At the outset, you said in principle you are opposed to censorship and I thought I heard you say at a certain level there should be a total ban.

Mr. Zaludek: Yes. I am not quite sure what that level is.

Mr. Williams: In other words, you are suggesting there are situations you would support in which a film should be prohibited from being shown?

Mr. Zaludek: Yes.

Mr. Williams: Is that not a contradiction of what you started by saying?

Mr. Zaludek: I suppose it is in a sense, but we are considering something beyond censorship and the issue of looking at movies and cutting out little scenes, bits and pieces, and preventing the flow of information. When I say a ban, I am talking of levels such as child pornography, snuff movies and things such as that, which should definitely be stopped.

Unfortunately, I have had the displeasure of seeing some of the pretty raw stuff with the various police departments.

Mr. Williams: If I could just pursue it a little further, you are suggesting we stick with classification, or in exceptional cases a total ban, but as far as editing films, you see no justification for applying that type of moderation.

Mr. Zaludek: I do not think there is.

Mr. Williams: To apply community standards as the Ontario Film Review Board would interpret it.

Mr. Zaludek: Right. One difficulty we face is, what is the community standard? You are all aware that different provinces are now setting up their own similar rating systems or having discussions. Various definitions of what is and is not acceptable are being created and this is going to create a tremendous problem.

Mr. Williams: Why would you object to certain offensive parts of a film being edited or cut, if artistically the film had

merit? Why would you oppose that and not permit the film to be shown at all because of one offensive part?

Mr. Zaludek: The question is, what is artistic or not? Generally, films in the areas of, say, child pornography or snuff movies, are continuous all the way through; they do not do just one bad scene.

I suppose if a movie had one 10-second segment of some kind of child pornography, then that would be clippable. However, I do not think you will find that happens.

Mr. Williams: Thank you.

Mr. Elston: I am interested in whether you on your own have ever refused to duplicate a film for distribution.

Mr. Zaludek: Yes, we have.

Mr. Elston: You have refused to do it?

Mr. Zaludek: Yes.

Mr. Elston: So in some sense, you provide your own sort of community standards test, I presume.

Mr. Zaludek: That is not quite true. We do not take it all on ourselves. There are basic unwritten guidelines in existence now between the various police levels. What we do is watch the movies we duplicate, and the operators try to spot areas that may be troublesome. If a movie is questionable, we either send it back to the producer, question him on the matter, or we send it to the Ontario Board of Censors for an unofficial ruling.

We have submitted copies to the Project P people to get an unofficial ruling at various times, because nothing is official at the moment.

Mr. Elston: On your own, you have decided that some films are so offensive to you or the people you employ that you will not distribute or duplicate them.

Mr. Zaludek: No. If the censor board or the police department says it is all right, we will do so.

Mr. Elston: However, you have on your own decided there are some films you will not duplicate.

Mr. Zaludek: No.

Mr. Elston: I understood you to say that you had.

Mr. Zaludek: No.

Mr. Elston: Only when you receive direction from those others.

Mr. Zaludek: Right. We look at it first and then make

the decision whether it should be submitted: is it questionable?

Mr. Elston: Is it on the questionable level? So really what you are looking at is the question of perhaps criminal prosecution for distributing pornographic material.

Mr. Zaludek: That is right.

Mr. Elston: You would put on that list of things you would not distribute or reproduce such things such as snuff films and child pornography.

Mr. Zaludek: That is right.

Mr. Elston: I am interested in your thoughts about the rating system. I know it is a difficult question for you, but with respect to our mandate as a committee of representatives of the public we should consider some thoughts from people involved in the industry.

Since you are in the business, could you tell us some of the classifications you would like to see or a way you think films ought to be rated for the viewing public?

Mr. Zaludek: Of course, that is probably the most wide-open question there is on the rating system. As you know, different terminology is used by different people. For example, in the United States they use a different system from what we use. Although the terminology is almost exactly the same, the rating within the terminology is quite different.

Basically, it should be a system where, without going into specific words, you define "children's level"; then you define the next level as, maybe, "violence separate from nudity," and so on down the line, much the same as you do now. Rather than defining four categories, maybe we could have a one-to-10 scale, if there is such a thing. But we should expand the definitions so a person going into a store can actually have a good idea of what is in the film.

It is quite a different process now in the stores. The average person who goes to a theatre may go there once every three or six months and he has time to decide what movie he is going to pick to watch. He generally has a fairly good idea about the movie he is going to see.

A video store is a totally different situation. A person may go to a video store wanting to rent Raiders of the Lost Ark but it is not available. So he will rent three or four movies whose titles he may not even have heard. All he will do is look at the picture on the cover and try to guess what is in the movie.

The store owner does not know what is in the movie; he does not have time to watch them. The package has to have a clear definition of what it is all about, especially from the pornography aspect, because there are X-rated movies that sound like a Walt Disney movie and vice versa.

Mr. Williams: Like Snow White and the Seven Dwarfs.

Mr. Zaludek: Right. It is very difficult.

A store owner also takes the movie out of its own box and all it has is a label that says, "Snow White and the Seven Dwarfs." You rent the movie, you have a children's party and you have the wrong film. So the movie does have to have a definite ruling on it.

Mr. Elston: I am interested as well in any reaction you might have as a member of the business community on the question of licensing and fees that could become part of the system. Have you any thoughts on the question of licensing or fees chargeable for business purposes?

Mr. Zaludek: First, I certainly think stores should be licensed. It does not have to be exorbitant, but there should be a licensing fee of some sort. Whether it is \$5, \$100 or whatever is not my decision.

There can be a limited charge for a movie. If it becomes too prohibitive, it will be very restrictive. Keep in mind that there are approximately 100 movies being released on the home video market every month. There are now about 2,500 titles in the major marketplaces. There are about another 2,000 movies out there on various questionable things and nobody knows what they are. There can be a fee, but it has to be very small.

Mr. Elston: What about a fee for distributors?

Mr. Zaludek: They should pay a licensing fee too, of course. There should definitely be licensing fees.

Mr. Chairman: Excuse me, Mr. Williams. We have Mr. Spensieri and Mr. Allen, so we can let you do it at the end.

10:20 a.m.

Mr. Spensieri: Thank you, Mr. Chairman.

Sir, you briefly touched upon what you as a business representative see as the respective roles of federal and provincial governments. Could you expand a bit and tie it in with this bill as to how you see a better correlation between the two levels, and also, specifically, the role of customs, Canada Post and that sort of thing? Do you see a greater possibility for a more concerted and co-operative effort? What are your thoughts on that?

Mr. Zaludek: Of course, customs is starting at the bottom of the barrel right now, I suppose, with the post office. They really do not have much jurisdiction over it.

They do not look at anything, first of all. Any material that comes across the border is not approached from that point at all unless it is obviously a title that looks and sounds terrible. Some of the Disney titles do. That creates a tremendous problem in

holdup at customs, because customs has no way of deciding what the film is about.

My feeling on that matter is that there should be a federal rating system that is administered by the provinces so it is a uniform system across Canada, rather than a group of individual systems.

Some of the reasoning is from a business point of view. Last year, we duplicated over a million cassettes for the marketplace. I would say that about 40 per cent came to Ontario; the rest went across the country. This year, we are going to duplicate over two million cassettes, with about the same balance.

It is virtually impossible for us as duplicators to try to determine which cassette is going to go into which province, where it is going to end up. We are now facing the problem, first of all, of putting Ontario ratings on all cassettes for all provinces. If another province comes up with it, we just have to put another sticker on it. Theoretically, we could end up with 10, 12 or 13 stickers on these tapes. You would not be able to see the tape for the stickers by the time we were finished.

I am not so sure this would be advantageous to the public, because by that time, they would be so confused that they would not know whether they were coming or going. Really, to my way of thinking, it has to be on a federal rating system, which is then administered by the province.

Mr. Spensieri: If you had a uniform system, would you see a greater likelihood of involvement at the source, if you like, by the so-called federal authorities and their agencies, customs and the post office? The source is where the problem is.

Mr. Zaludek: I do not think customs has ever served in any meaningful matter--certainly not the post office. The post office is a small carrier of the matter. It makes up a very small part of actual bulk shipping. The post office gets more involved at the border, where you get a lot of X-rated material which comes across. From discussions with them, I find they have virtually no way of telling.

Mr. Allen: Mr. Zaludek, if I heard you correctly, you are in the position of many of us in the country; on the one hand, we do not like censorship, but we have our limits, and therefore we want censorship.

Mr. Zaludek: That is true.

Mr. Allen: I think that tension is fundamental to your presentation--if I can put it one way, and not say "contradiction." I am really interested to get at just what kinds of structures and devices you think most adequately facilitate both you as a businessman and your concerns as a person about the content of materials in cassettes, films and what have you.

Perhaps, first, I would ask you whether you agree with the central proposition of this bill: that all films and videotapes be

screened in advance by a central censorship board, film review board, whatever it is called.

Mr. Zaludek: I think that should be done. I do not know if I would say it would have to be every film; I think the master copy of the original should be approved--actually they should be rated--rather than the individual copies.

Mr. Allen: Do you find it a problem to have only one appeal to a second panel created by the board--essentially of the same sorts of people who made up the first panel--and that this would be an end to it?

Perhaps I could put forward the alternative. Would you prefer a system in which, after having heard the judgement of the appeal committee, you would be free then to go on to the market with your material, taking into account the risks entailed as a consequence of the judgement that was made, and knowing what the present or perhaps the new provisions of the Criminal Code might be in that respect?

Mr. Zaludek: I would think about 80 to 90 per cent of the material distributed in Canada is from major studios. You would have virtually no appeal problems there, because 90 per cent of all these materials are seen in the theatres now. So it is really obtaining the same rating as it is in the theatres. I think there should be an appeal but I do not think you would have much problem in that area.

The important factor in this whole thing is the time element. That is something that really has not been addressed. For instance, for a movie that is going to be released today, we get the masters only about two and a half weeks ahead of time from the US. So we have two and a half weeks to produce all those copies and get them all into the marketplace at the same time, because it is very critical that every store has the opportunity to get that same tape at the same time so as we do not restrict competition.

We also have to release at exactly the same time as they do in the US marketplace, because if we release Raiders of the Lost Ark three days after the US marketplace then there is a whole flood of product from the US, because every store tries to jump the gun. So whatever the rating system, it is going to have to be very critically positioned so that it approves, screens and rates very quickly. Even from that point of view I do not think you will have too many people appealing, because they will not even have time to appeal, if there is any kind of logic in that.

Mr. Williams: Just before Mr. Allen goes on, could I just set the record straight here? Mr. Allen, you asked Mr. Zarudek whether he agreed with there being only one right of appeal with essentially the same people sitting on the appeal. You did not really mean that, did you? As you know, the act specifically states it would be a different panel sitting on the appeal and not the same people who sat on the original screening.

Mr. Allen: No, I think if you look at the record, I did not say it would be the same people.

Mr. Williams: You said essentially the same people.

Mr. Allen: It would be the same kind of people who would be drawn from probably the same kind of cross-section grouping of the public that had dictated the composition of the first panel. I think that is likely to be the case. Certainly the act requires that they be different people--no question of that--but what I was getting at was not whether the similarity was there or not, but really whether you were satisfied that this would be the end of the line. Would you prefer access to the courts to take it beyond that, or is that sufficient for you?

Mr. Zaludek: I think that would be sufficient. I do not see any reason it should go beyond that. The rating system should be really expanded beyond the four or five categories that exist now. In the US they have been expanding it into triple-X, double-X and single-X. Ideally, if it was feasible, it would be almost on a computerized system where you say if this film contains this, this and this, it automatically is rated as that. I know that is not possible, but if you could do it that would be the ideal system.

10:30 a.m.

Mr. Allen: One real problem I have with what you are proposing to us is that you always seem to be proposing solutions that you want to be tight and clear, but at the very same time you appear to recognize there is an immense grey area of judgement that cannot be accommodated in a specific, tight, clear structure and system.

Since you recognize that, is it not important that you and the artists, authors and producers you represent in a sense by duplicating films should have at least further appeal to courts, lest a judgement that is done on a tight, computerized rating system--which would be your ideal--would in effect eliminate works that in their larger context are works of merit?

I will put it another way; that is, with respect to community standards and the need for a national code or structure that handles this whole world of material. I think the reason we have different provinces and different legal systems in some respects, and in this particular case in which we have a varied set of criteria, is precisely because communities differ, just as individuals do. Regions differ, and they, for different cultural reasons have different levels of tolerance so that when one talks about community standards it is difficult to say there is a national standard as distinct from a Quebec standard or a Nova Scotia standard or a Manitoba standard or a British Columbia standard.

If that is the key to any rating system--every rating system I have seen articulated and defended--it has to do with how to define categories which enable the community to decide what is acceptable to it, and that is the basis on which this act proposes to set up a rating system.

Does that not raise yet another area of problems? Does it not mean the tight structure you want to see in place for business

purposes may not, from the point of view of cultural, political and social circumstances, be appropriate?

Mr. Zaludek: I can appreciate the problem. It is a severe problem. I am also in business and I also have three kids at home. I do watch a lot of movies and I have been caught in various uncomfortable situations watching the movies.

The problem is that if you go city by city or region by region, I do not think you will ever come out with a system that will work. Again, it is almost impossible for the final decision to be made by the feeling of an individual judge in the various territories. If you allow that, the system will fall down because you will keep going merrily along, which is almost what you have now. Every store will be charged at random, movies being confiscated in Toronto and not in Hamilton and vice versa, and you just keep on going.

I suppose what I am suggesting is more of a system of one to 10, where all movies above a certain level are rated. Now, at an individual provincial level, you might say that movie is at eight instead of 10. It may be that on a community standard certain provinces may change the level on that scale and create the community standard by that level, if that is feasible. But with a national rating system, a movie which is rated at nine may be acceptable in Quebec, where it is virtually wide open, but it may not be shown in Ontario. Maybe only an eight and above could be shown in Ontario.

Mr. Allen: If I can sum all that up, it is simply that, the vast majority of problems would be adequately handled--from your point of view as a distributor trying to rationalize the market and to organize your business in a sensible way--by, first, having a rating system; this essentially gives information about the films; it does not judge them as good or bad or worse or better; and second, a place you can go to get judgement on a regular basis as to whether the films you will be distributing, broadly speaking, offend community standards in that locale. You can then make your own judgement as to what to distribute, what not to, or what to send back. -

Mr. Zaludek: Yes, ideally that would be the case.

Mr. Allen: Anything tighter than that is not necessary, except for the very extreme and very small minority of films. That could be handled through the courts presumably.

Mr. Zaludek: Right.

Mr. Chairman: We should be moving along, because we have other witnesses. Mr. Williams, you have a quick question.

Mr. Williams: Just coming back to what you said at the outset, Mr. Zaludek, it is my understanding that you have neither the time nor the desire to exercise your own discretion as to what you would duplicate and distribute in Ontario or Canada. By the same token, you are well satisfied with permitting the board under this legislation to expand its role and authority to do the job it

does best, which is to classify and review films, and to apply that to the video field. Is that correct?

Mr. Zaludek: Basically, yes. The situation is that I hate being judge and jury on the thing.

Mr. Chairman: Thank you, Mr. Zaludek, for coming and expressing your views.

CANADIAN CIVIL LIBERTIES ASSOCIATION

Mr. Chairman: Next we have the Canadian Civil Liberties Association, Ms. Erika Abner. Would you come to the table and identify yourselves, please?

Mr. Borovoy: Mr. Chairman, I am Alan Borovoy, the general counsel of the Canadian Civil Liberties Association, and I have with me our research director, Erika Abner. First of all, let me express our appreciation for the opportunity to appear before this committee on this subject.

In view of the brevity of the time we had to prepare and in view of the shortness of time in which we have to present, we are going to confine our submissions to one issue: the extension and retention of the power to engage in prior restraint censorship of films. No matter under what title it may appear, it is nevertheless a continuation and extension of a power to censor the films that the public may see.

To begin, as lawyers like to begin, with the conclusion, it is our conclusion that this represents a needless and drastic encroachment on one of the most vital values of our society: namely, freedom of expression. The Canadian Charter of Rights and Freedoms guarantees a number of fundamental freedoms, of which freedom of expression is one. It occurs very near the beginning of the charter, I suspect, to indicate its central importance to a democratic society of our kind.

It is significant that the charter uses different language from that employed by the statutory Canadian Charter of Rights and the American Bill of Rights, both of which talk about freedom of speech. Here it is freedom of expression. I think this indicates that the drafters of the charter had something far broader in mind than the mere communication of words.

Indeed, the Divisional Court of the Ontario Supreme Court said in the Ontario Board of Censors case as it made its way through the courts, "To us it is clear that all forms of freedom of expression, whether they be written, oral, pictorial, sculpture, music, dance or film, are equally protected by the charter." That is as close to a quote as memory will permit me to convey to you.

10:40 a.m.

I said it was a needless encroachment on freedom of expression. I say it is needless because the object, which is to discourage the circulation of certain kinds of obscene material, can be achieved in two other ways, and indeed is being achieved in

two other ways. First, it can be achieved by a system of classification, to which we have no particular objection. The films can be classified so as to put adults on their notice; if there are certain films they do not wish to see, they can be notified in advance and can avoid subjecting themselves to that experience.

As far as children are concerned, their access to the material can be regulated in the sense that there are some restrictions on their right to attend theatres when certain films are being shown, and the right to purchase and engage in purchasing, leasing, or whatever transaction is at issue.

The second way in which the object of this exercise can be achieved is by criminal prosecutions for trafficking--I am using that word generically so that I do not have to go through all of the terminology in the Criminal Code--in what it calls obscene material.

While we in the Canadian Civil Liberties Association are not particularly delighted with the Criminal Code provisions on obscenity, they are in place--whatever we may think of them--and available to prosecute those who manufacture, produce, traffic in or even have in their possession for the purpose of distributing what it calls obscene material. I find it hard to conceive of how the purpose which the government may have in mind cannot be adequately served by classification and/or criminal prosecution.

I said it represents a drastic encroachment on freedom of expression. I say it is drastic because it requires that people, as a condition of their right to engage in the expression at issue, have to submit it for approval prior to expressing themselves. Of course, this is rather unique.

The way criminal prosecution works is that we are completely free to communicate, but we may be held subsequently accountable if what we communicate is in violation of the law. To illustrate this, I suppose I could put it this way: it is inconceivable that this country would tolerate--except in a situation of dire emergency such as a war--any requirement that the mass media of communications, the newspapers, television or radio, submit copy in advance and have it cleared as a prerequisite of the right to publish or broadcast it. We would not tolerate it.

The same media, however, are nevertheless subject to a number of potential restrictions if, after they communicate, they violate the law. There is hate propaganda, obscenity, sedition, contempt of court, the Official Secrets Act--all sorts of restrictions. Indeed, I have a number of quarrels with some of them as well. Be that as it may, that is what the media are subject to. There is no question that they have to clear in advance what they are going to say.

10:45 a.m.

Suppose the Globe and Mail--I do not want to discriminate, but just take that as an example--or the CBC received the proverbial brown envelope containing the most delicate defence

secret: some nuclear information, for example, the release of which could be very damaging to our national security. I know of no law that would require the newspaper, television or radio network to go before a board and have their material cleared before they have a right to convey it. Yet if we are talking about sexy films, they have to clear in advance.

I suggest that the only conclusion one can draw from this set of priorities is that this government must consider sexually explicit material more dangerous than a breach of national security. I submit that there is no other logical conclusion that can follow.

The problem is exacerbated with respect to this bill, because not only does it enlarge and continue this questionable system of prior restraint censorship but it also purports to do so on the basis of criteria that are not available for public inspection; it is to be there to be settled by regulation.

As you appreciate, lawyers always argue in the alternative. To whatever extent you are to disagree with what I have said about prior restraint censorship--and I submit you ought not to disagree with it--I suggest the very least that ought to be done is that the criteria on the basis of which the censorship is to be exercised should appear in a statute openly enacted by the Legislature and subject to public scrutiny and not in a regulation secretly enacted by cabinet away from public view. Indeed, the criteria have always created the major problem.

Our whole experience with the censorship exercise, even with the Criminal Code, shows the virtual impossibility of trying to define with any adequate precision what it is that is to be restricted and the great risk that, however those definitions have been formulated, they inevitably would sweep into the restrictive net material other than what was designed to be suppressed. That is why it is so crucial that those criteria be debated openly to whatever extent this exercise is to be continued.

Indeed, I suggest the government is asking the Legislature and the public to buy a constitutional pig in a poke. As the bill is drafted, I can see nothing to prevent the regulations from attempting to curtail the flow of political material on political grounds as well. There may be some constitutional problems, but there is nothing in the statute to prevent it.

It is interesting that at least one expert, Professor Peter Hogg, in a book published at the time the charter was proclaimed, Canada Act, 1982, Annotated, said that while we can have some exceptions to freedom of expression, "It seems plausible to insist that the law be enacted by the federal Parliament or provincial Legislature so that the claimed restriction is the deliberate product of an open parliamentary process."

10:50 a.m.

In all fairness, since the charter there has been some indication that there is authority going the other way. I am not suggesting they all say that. As you may know, the Canadian Civil

Liberties Association was involved both in the Divisional Court and in the Ontario Court of Appeal in the film censorship case.

In all fairness, I do not want to suggest that any of us could have a definitive prediction about how a court would ultimately rule on the bill before you. What I think I can say is that there is at the very least a reasonably arguable case that it is unconstitutional. Even if you were not prepared to make that judgement, I suggest it represents very bad policy to have such a drastic and needless encroachment on a value so central to a democratic society as freedom of expression.

On the basis of all this, we submit with respect that the powers of the censorship board at issue should be amended so as to confine the exercise to one of classification and not of restriction.

Mr. Chairman: Are there any questions from any of the members?

Mr. Elston: Thank you, Mr. Chairman. I am interested in the question of restricting freedom of expression. I think you were here when Mr. Zaludek was talking about his sense that there is a need for dealing with items like child pornography and snuff films. Do you see any need to deal with those types of expression, or can you tell us what is being expressed by films like those that ought to be protected under your classification-only system?

Mr. Borovoy: As far as films of that kind are concerned, I would suggest that they quite likely would fall within the obscenity definitions of the Criminal Code and would be subject to prosecution. On that basis, there is no need for prior restraint.

Mr. Elston: You mentioned that by and large your presentation goes hand in hand with the federal statute. You have some quarrels with it now. Can you tell us what they are so we can understand how to deal effectively with this companion legislation?

Mr. Borovoy: We have long believed the definition of obscenity in the Criminal Code is far too broad, vague and sleepy. Legitimate material could easily fall within the prohibition because it is so very difficult to understand and discern. However one might respond to that definition, it is part of criminal law, rendering unnecessary the exercise of prior restraint censorship about which you are talking.

Mr. Elston: Okay. It is too broad and catches some material that should get through.

Mr. Borovoy: And indeed has caught it.

Mr. Elston: Would you say there is a possibility it has been so vague that some material has passed through that should not have been allowed?

Mr. Borovoy: I cannot imagine anything to which people have currently objected that would get through that definition. I suppose there is some material, and it depends what you mean.

Mr. Elston: That is the whole problem, is it not?

Mr. Borovoy: Certainly. If you are talking about the most vile material we all hear about, I have little problem seeing that it is going to be caught by the federal definition.

Mr. Elston: So you would rather see any of that material dealt with in the criminal courts under the federal statute instead of on an individual provincial basis.

Mr. Borovoy: What I am saying is that regardless of whatever quarrel I may have with the federal obscenity law--and there are a lot of debates I could go on about; there is an interesting editorial about it in the Globe and Mail today as well--it is a far less drastic encroachment on freedom of expression than is a system that requires you to vet what you may express before you have a right to express it.

Mr. Elston: Let us deal for a moment with the question of enforcement of the federal statute and the viewing situation that has to take place before prosecution can be carried out.

If a master of a film came into Canada, was tested in the courts and found at some level to be acceptable in the federal scheme of things, would you say that any distribution of material that deviated from that would be an automatic violation of a federal statute, for instance? Or would you continue to prosecute individuals on a case-by-case basis to deal with the community standards in each individual area of the province and of the nation?

Mr. Borovoy: I am not sure I quite have your question, but I will try to answer; if I have missed it, let me know.

If I had my druthers, I would suggest that the enforcement policy--and that is very much a provincial matter--with respect to allegedly obscene material be initially an in rem proceeding as provided by section 160 of the Criminal Code, where the material is made the subject of a judicial hearing as a prerequisite to prosecuting individuals, because of course you cannot expect any one individual to know what community standards are.

I said elsewhere with respect to some of these store owners who are being prosecuted that it effectively requires them to commission a Gallup poll every time they want to sell something in their stores that may have some sexual material in it. I would suggest that there be initially an in rem proceeding into whether the material is obscene.

Once such a determination is made--and that requires notice to all interested parties; so it is a regular judicial hearing--if the material is judged in that way to be obscene, then the community is put on its notice that if it continues to traffic in that material, it may run afoul of the criminal law.

Whatever objection I may have to some of the obscenity laws, I suggest that represents a far fairer way to administer the criminal law, and were that done, I submit that no valid purpose whatsoever would be served by the film censorship exercise.

Mr. Elston: How does that differ from what the film review board, as it is to be called, is doing? That seems to be a prior review of the material.

Mr. Borovoy: Not at all, because the Criminal Code does not require that everybody vet every film he is going to show or distribute. It simply says that if the authorities believe a particular film to be in violation of the law, they then have a hearing with respect to that film. However, there is no continuing obligation on members of the public who are involved in films to go humbly before a censor and say, "Please approve this for me." I suggest there is a very great difference.

Mr. Chairman: Excuse me. Mr. Elston, I have one more questioner. Can we wind up with you now?

Mr. Elston: I am prepared to let the questioner go ahead, but in fairness I may have a couple of other questions because Mr. Borovoy has provided this committee with some very wise counsel on so many other occasions.

Mr. Chairman: I understand what you are saying. If we can get back to Mr. Borovoy after Mr. Williams has a few questions, that will be agreeable. Mr. Allen also has a question.

11 a.m.

Mr. Williams: I have a point of clarification first of all, Mr. Borovoy, and then I do have two or three questions.

Mr. Elston, in questioning you, asked your position with regard to snuff films. I think you had suggested that we do not need the film review board to deal with them; that it is handled by the Criminal Code. You, as a lawyer, when you said snuff films would be entirely covered by the Criminal Code, would know whether that would cover films dealing with violence only, without sex involvement.

It is my understanding that the code is such that, in order for it to be applicable, sex and violence would have to be part of this snuff film content. Could you correct the record?

Mr. Borovoy: I think that is so.

Mr. Williams: So you are saying that if there is a snuff film dealing with intense violence only from beginning to end, it would not be covered by the Criminal Code?

Mr. Borovoy: If it had nothing to do with sex; I think that is so.

Mr. Williams: So you would modify your earlier statement about the code covering snuff films in every situation.

Mr. Borovoy: Yes. Now, it is my understanding that the film censorship exercise so far has confined itself essentially to sexual material.

Mr. Williams: I tend to disagree. I think that could be shown not to be the case. However, I think you have clarified the situation.

Mr. Borovoy: But that is quite right.

Mr. Williams: Let us see if we are moving from the same basic premise. Do you or do you not believe that, even in a democratic society, no person has absolute individual freedom?

Mr. Borovoy: Certainly.

Mr. Williams: You agree that he does not?

Mr. Borovoy: That is correct. There are no absolutes in the real world.

Mr. Williams: Okay.

Mr. Borovoy: I cannot testify about other worlds.

Mr. Williams: Yes. So you understand, therefore, there are laws that limit what you can do as an individual on a day-to-day basis.

Mr. Borovoy: Of course, and it must be so.

Mr. Williams: It should be, in the interests of society as a whole.

Mr. Borovoy: Sure.

Mr. Williams: I gather that with regard to the activities of the Ontario Film Review Board, you do not feel they would have some right and obligation to monitor what is in the best community interests and--

Mr. Borovoy: I am sorry; would you say that again?

Mr. Williams: I presume, notwithstanding that observation, that you still have some objection to a governmental regulatory body like the Ontario Film Review Board not having the authority to regulate or apply community standards that would be in the best interests of the community as far as artistic expression is concerned that might be in conflict with those community standards?

Mr. Borovoy: That is correct. If I followed your negatives through to their logical conclusion, I believe that is correct, but I will restate it. Though I readily acknowledge that there are no absolutes in the real world, I regard freedom of expression as being so vital to our kind of society that it would take some special set of circumstances to warrant encroaching on it. Those circumstances are not at issue where this exercise is involved.

Mr. Williams: So, in your judgement, the most vital value--freedom of expression, as you said at the outset--is an absolute.

Mr. Borovoy: No. On the contrary, I have explicitly said it is not an absolute; but I have said, notwithstanding that, it is so vital that it should be overridden only under certain very compelling circumstances, and they simply do not exist in this situation.

Mr. Williams: The main purpose of this legislation is to respond to a decision of the court, which said that the Ontario Film Review Board did not have the power to apply community standards as it saw them by way of guidelines and that the board had to codify the standards of the community, as it saw them, and as such would be entrenching the community's standards into law. They would be there for scrutiny by the public so that it could be clearly understood by the public. Do you agree with that direction in which we are moving?

Mr. Borovoy: I think it is less bad to have criteria than no criteria.

Mr. Williams: Is that a double negative?

Mr. Borovoy: Perhaps, but I at least was able to follow the logic of what I said.

Mr. Williams: You had suggested that--

Mr. Borovoy: Sorry, but if I may complete my thought, while I agree it is less bad to have criteria than no criteria, there are no criteria in the bill before you. There is simply a provision to have them. Somebody else will set the criteria and the process will not be subject to public scrutiny. That, in my judgement, represents a very serious departure.

Mr. Williams: That is the next point I was coming to. I would really take issue with your suggestion there would be regulations in the form of codification we would be imposing on the board.

In fact, it very clearly would be open to public scrutiny. Once this committee has dealt with the public hearings, it will be returned to the Legislature. At that time, when the bill is dealt with on a clause-by-clause basis, the regulations being proposed to complement the legislation, to codify the guidelines, will also be before the Legislature and thus be debated in a public forum.

Under those circumstances, how can you say we are dealing with a set of secret regulations developed by the cabinet?

Mr. Borovoy: I am saying the bill permits the adoption of the guidelines in secret. I fully appreciate they would subsequently be made public, but under the terms of the bill they could be adopted at an in camera meeting of cabinet. I suggest that represents a departure from one of the most vital safeguards in this whole exercise; namely, public scrutiny of the process by which those criteria are adopted.

Mr. Williams: Are you suggesting there is secrecy involved because the regulations and/or the statute itself are

developed in the preliminary stages by the ministry responsible for the legislation? Is it because it does not see the light of day before it is introduced into the House that you are saying it somehow is developed in a secretive fashion?

Mr. Borovoy: No, I am suggesting it can have all kinds of in camera preparation but the adoption into law should be public. The adoption into law of these criteria, whatever they may be, is not at all public. I submit that represents a very important distinction.

Mr. Williams: One last question: you said--I think two or three times--that this initiative being taken here with Bill 82 appears to be a drastic and needless encroachment upon this valued freedom of expression. You suggest the direction in which we are moving is unique. However, it seems to me we are proceeding no differently from the way most countries with a free and democratic society have already moved. In France, Germany, Italy, Sweden, Norway, Australia, New Zealand, the United Kingdom--to name but a few--the same type of system exists.

How do you conclude we are moving in a drastic and needless way that is contradictory to what is being practised in most democratic countries in the world today?

11:10 a.m.

Mr. Borovoy: I did not say its uniqueness involved its status in the world. You are not naming countries such as Belgium and Denmark and the United States where they are not practised. But for the moment we do not need to count heads. I have no difficulty acknowledging that there are many countries in which this exercise is carried out.

When I referred to it as unique, that is not the sense in which I meant it. I mean that it represents a unique form of encroaching on freedom of expression in our society. We do not require that even the most vital defence information be vetted by a board prior to its publication, and we do with a sexy film.

In that sense it is rather unique to our legal system. We are somehow treating these kinds of films as different from all other kinds of expression.

Mr. Chairman: Excuse me, I think this would be a good time to pause. We are over our time, Mr. Williams, and we could go on for another hour, I am sure.

Mr. Borovoy: I wanted to respond to something else, if I may just take a moment for snuff films. This is very brief, Mr. Chairman.

Mr. Chairman: Go ahead.

Mr. Borovoy: I might tell you this is one area in which the Canadian Civil Liberties Association has already told the federal authorities we would have no objection to a statute that prohibited the dissemination of material in which a particularly

repugnant crime was committed for the purpose of making a film or book. If you are referring to the unlawful abuse of a real child, or abuse against the consent of an adult, there would be a real argument there.

To the extent the purpose of that exercise is to protect the individual from harm, you are basically involved in criminal legislation. I would suggest it is outside the framework of a provincial censorship board.

Mr. Williams: Just as national security is outside the realm of provincial responsibility.

Mr. Borovoy: Certainly.

Mr. Chairman: I think on that note we can thank Mr. Borovoy and Ms. Erika Abner for appearing before us. It was interesting, as usual. Mr. Allen, hopefully we will have you as the first questioner with the next group.

Mr. Elston: I think that is unfair to Mr. Allen. He probably has questions for Mr. Borovoy.

Mr. Chairman: All right. It is your time, gentlemen. We have scheduled these people, so if you want, go ahead.

Mr. Allen: Mr. Borovoy, first let me thank you for a very thoughtful, forceful, highly integrated and logical presentation.

In saying what you did about national security and some other media and what is and is not prohibited, I think you probably recognize there are people in our province who say this issue is as serious as national security; that the undermining of the moral fibre of the community is perhaps even more insidious and has more long-run implications than the peril of state in international relations, which another kind of censorship might try to control.

In that light, would you be prepared to comment on those generalizations, and along with that the whole question of community standards? On the one hand there is an argument from a more conservative standpoint--if I might put it broadly--that it is absolutely critical to have structures of the kind proposed to maintain the controls that uphold moral values.

There is, on the other side, the more radical concerns of--let us say again, for want of a better description--fairly activist feminists, who argue that present community standards are not a good guide inasmuch as they defend certain existing patterns of relationships and domination that are inappropriate in a free society, and that for the maximization of a greater justice it is important to have much more severe restraints than we now have, in order to move towards that more ideal state of social relations.

Mr. Borovoy: The problems raised in your very thoughtful question go to the heart of what is permissible in a free society where as vital a value as freedom of expression is involved. It is

one of the reasons the wise and great Judge Oliver Wendell Holmes made so much of the exception to freedom of speech--as he saw it, falsely shouting "Fire" in a crowded theatre.

Implicit in that was the recognition that a democratic society is necessarily bombarded on all sides by all kinds of points of view and that we do not use criminal law and the power of censorship for the purpose of producing ideal attitudes in people. The answer to bad material is good material; it is not criminal law and it is not the power of censorship.

Of course, each of us could conceive of some horror for which an argument might be made for a form of censorship. Indeed, as you asked the question, you said some people might say that sexually explicit material is more dangerous to our society than a breach of national security. I have no difficulty in saying that is absurd.

I recognize, of course, that to be bombarded by certain kinds of material could erode, in time, some of the values that many of us hold dear. That might apply in the sexual area. Indeed, to be bombarded by communist propaganda might ultimately erode our defences against totalitarianism. I would regard that as very serious.

I would suggest this is the very risk that democratic society is all about. Unless there is a clear and present danger--that is, an imminent peril to life or limb--we believe in counteracting bad material with other material. To depart from that has very serious consequences for our kind of society.

Mr. Chairman: Mr. Allen, I am going to have to interject. Thank you again, Mr. Borovoy, for being here. We appreciated your comments.

CITIZENS AGAINST VIOLENT PORNOGRAPHY

Mr. Chairman: Next, we have the Citizens Against Violent Pornography, Ms. Gail Rutherford. Would you all come to the table and please identify yourselves--for the record?

Ms. Rutherford: Good morning, Mr. Chairman, ladies and gentlemen. My name is Gail Rutherford. On my right is Mrs. Susan Smeeler and on my left Con O'Mahony.

We are members of a group called Citizens Against Violent Pornography. We are a group of men and women from Georgetown, Ontario, who formed two years ago in reaction to increasing violence and use of children in pornography.

We have been in contact with a large number of people from our community. Some 3,000 have indicated support for our aims. As we have become well-known and received editorial endorsement from our local newspapers, we find people constantly coming to us with their concerns about what they have seen in the cinema or on rented videotapes.

Since our inception, we have lobbied both the federal and

provincial governments; the first for amendments to the Criminal Code of Canada which would remove the link between sex and violence in the legal definition of obscenity, and for a law, as the Badgley commission recently recommended, against using children in pornographic materials.

We have pressed the provincial government for a bill such as the Theatres Amendment Act. In particular, we support bringing videotapes under the jurisdiction of the Ontario Film Review Board.

11:20 a.m.

I have with me the newspaper article which inspired the formation of our group. The title, "Video Porn: Sadism Comes to TV," indicates the nature of modern pornography. I would like to read to you from the article a description of one of the videos.

"In *I Spit on Your Grave*, a woman walking in the woods is attacked and raped twice by four men. She escapes to her house where the four are waiting. They beat, kick and force her to perform fellatio on them. A bottle is thrust inside her. Unlike most rape victims in the films, who enjoy the experience, she is in obvious agony. And in later scenes she takes revenge by murdering her attackers.

"The first she seduces and hangs, the second she chops up with an axe, the third she invites into a bubble bath and castrates with a butcher knife, and the fourth dies on her boat propeller. No details are spared in any of the scenes."

The article with this description was written in February 1983. Since then violence has become epidemic, with one film maker trying to outdo another with one climactic scene of frenzied bloodletting, which an increasingly desensitized public carry home with them like some ghoulish souvenir. Dr. Everett Koop, United States Surgeon General, calls violence the number one enemy to mental health.

We found *I Spit on Your Grave*, as well as *Snuff*, which shows the vivisection of a woman, in a video shop in Mississauga just this summer. Our group has rented *I Spit on Your Grave* in Georgetown. These videos have been deemed obscene or customs prohibited, yet they are readily available in video shops because of the lack of a licensing system.

The police admit they cannot monitor all outlets on a regular basis. Therefore, what is confiscated by them at one outlet is sitting on the shelf of another. By bringing videotapes under the Ontario Film Review Board you will allow video outlet operators to enjoy the same confidence that theatre operators have in knowing that what they are offering the public is lawful. Renters of videotapes would also have some indication of the nature of the material they request.

Parents renting tapes for a child's birthday party would not have the unpleasant surprise a local mother had in finding that she had rented an adult version of a fairytale title. There would also be just one version of a given title instead of the many that

exist today. This would give the consumer some confidence in recommending a tape.

We also support having the members of the Ontario Film Review Board set the guidelines by which the films would be classified and cut. These guidelines should, however, receive cabinet approval.

Members of the Ontario Film Review Board are the experts in movie trends, in the current level of community tolerance and in the research and opinions being offered by a myriad of disciplines. They are also the established centre to which the public turns when it has a complaint or a comment.

We have encountered a great number of people who understand the operation of the Ontario Film Review Board and are very supportive of it. In particular, the Ontario Film Review Board's interpretation of the community standard that limits violence and the sexual exploitation of children but gives greater freedom to erotic sexuality is seen as truly reflective of what the majority of Ontarians want.

No judge or member of the provincial parliament is likely to have the expertise of the members of the board. Neither would they represent the public as equitably as does the Ontario Film Review Board, which is made up of a cross-section of Ontario society in age, philosophy, background, lifestyle and ethnic origin.

One suggestion we have is that the Ontario Film Review Board's address and telephone number be made prominent in theatres and video outlets so that people reacting to a film or tape have immediate access to it.

One area of research that anybody regulating film would have to take into account is the current work done on desensitization. This is the process by which things that may originally be objectionable become commonplace and acceptable and in some cases are adopted as a lifestyle.

As recently as last Saturday I saw a report from the early 1970s used to substantiate someone's view that pornography does not influence behaviour. Of course, this study, which was not even accepted when it was presented, is outdated and irrelevant in terms of present-day material. It is incumbent upon any regulatory body to be familiar with up-to-date and solidly based research.

A study by Dr. Raoul Huesman spans almost 30 years. It noted the television preferences of people at age eight and has monitored these people into adulthood. It finds that those who preferred more violent television programming in childhood were far more likely to act out violence, to end up in jail and to commit antisocial behaviour than those who preferred less violent television. The children of those studied reflected their parents' predilection and preferred even more violent entertainment.

Another study, done by doctors Eysenck and Nias, is an overview of 100 other studies. They concluded, "The viewing of such materials, particularly when they are violent and degrading,

produces like effects in anyone who sees them and to a greater degree in already unbalanced individuals."

The police back this up when they reveal that in investigating the homes of rapists and those convicted of sexual murder and mutilation, violent pornography is almost always found. In October 1984, Michael Johnny was found guilty of stabbing Billy Verigin to death. During the trial, it was disclosed that prior to the killing, Johnny had seen up to 20 sex- and violence-packed videos per week. This is just one of a growing number of copy-cat killings.

Anyone can become a victim of desensitization, including members of the artistic community. Common sense tells us that we are affected by what we see. Why else would advertisers spend millions of dollars annually to have us watch people eat a certain brand of cereal or drink a particular kind of beer? Because this kind of advertising works. What some film makers are pushing at us, albeit artistically, is advertising for child abuse and brutality.

Researchers agree that when people are forewarned they are less affected by what they see. The Ontario Film Review Board can play a vital role in helping us counter the effects of desensitization.

As a community group that has held and participated in public forums, not only in Georgetown but also in Toronto, Mississauga, Brantford, Barrie and Windsor, spoken on innumerable occasions, written articles for newspapers and made itself very aware of the issues involved, we have gained the support of our local school boards, our mayor and town council, our local ministerial association and many other groups and associations in our community.

We recommend the passage of the Theatres Amendment Act into law without further delay.

Mr. Chairman: Thank you, Ms. Rutherford. Are there any questions by any of the members? Any comments by the ministry?

Mr. Williams: I think Ms. Rutherford's presentation has been an excellent one. You have dealt with all the concerns that have been before this ministry, and dealing with them is what the main content of this legislation is all about.

Your presentation was particularly helpful with regard to the manner in which constant exposure to this type of entertainment medium is affecting the threshold of acceptability of the public at large in the way or form of sex and violence. That information is particularly helpful to the committee. I know the minister is particularly concerned that the public's acceptance and tolerance of violence and sex seems to be threatened through this constant bombardment. That information is particularly helpful.

11:30 a.m.

I have just one question by way of clarification. You suggested in your presentation that the Ontario Film Review Board should be allowed to set its own guidelines, which would be approved by cabinet. I think you understand that the courts have directed that those guidelines, such as the present ones, now have to be codified and made more formal and set out in regulation, which is what part of this exercise is all about and which is one of the main thrusts of this legislation.

Do you have no objection to moving in that direction?

Ms. Rutherford: No, as long as it is the members of the board who are the ones from whom these regulations would come, rather than a legislative committee or people who would be operating in a sort of vacuum, coming in cold all of a sudden to what had been going on. The board needs to have that direct input as to what the level of tolerance is, what the trends are and what regulations would be set in those terms.

Mr. Allen: First, let me like to thank you for the presentation. Like yourselves, I have viewed a fair bit of this stuff at the censor board offices and elsewhere; I think I know exactly to what you are objecting, and I have a great concern about it myself.

I must say I have long been convinced that the argument that pornographic films of any kind do not have any influence flies in the face of all kinds of pedagogical evidence that everything influences, instructs and educates us and that, therefore, we are children, if you like, of what we see and view in total.

I suppose I have a small concern about experiments of the kind you mention that are done to demonstrate those results. They tend to isolate, as all experiments must, other kinds of influences from the whole context of interplay and whether this kind of influence is counterbalanced by another and, therefore, the end result is not as bad as one would get from the isolated experiment. That is a technical question but it is an important one. I think it raises questions about the experiments, in some sense, in real live settings. -

The question I must ask you in the light of your response to the question that was put to you by the chairman of this committee is whether you prefer that the regulations that govern your life come from a bureaucratic committee of specialists as distinct from those who are elected to represent you and who, when they sit in committees on these questions, do not just pronounce off the top of their heads; they do undertake to research extensively and, in this case, to view and assess so as to come to some intelligent conclusion as to what the best route forward is.

One of the primary problems that at least some groups that come before us would have with what you are suggesting is, quite simply, that we do not elect and have any authority finally over the bureaucracy other than through our elected representatives. If the elected representatives are not to be preferred as the screening device for public law and for the nature and structure of guidelines, then as intelligent and reasonable human beings, we cut ourselves off from control of our own lives.

What is your response to that proposition?

Ms. Rutherford: I think that, through the nature of the setup of the Ontario Censor Board, in that it does truly represent the community in its makeup, it is more representative than legislative people.

Mr. Allen: How can you be sure that will be the case?

Ms. Rutherford: You could put it into the regulations, could you not, that the makeup has to be as it has existed? Right now, the people who are elected as MPPs would almost certainly come from a similar class or a similar background. There is nothing that says MPPs have to have the wide range of background that the Ontario Board of Censors demonstrates right now.

Mr. Allen: Are those gentlemen accountable in any respect?

Ms. Rutherford: What I am saying is that the Ontario Film Review Board is constantly working with this and in touch with the community's standards of tolerance, constantly studying this research and seeing the movies, so the board members know what the trends are and are constantly being inundated with this stuff in the course of its work, whereas members of Legislature would not necessarily have that expertise or experience.

My preference would be for the established board to set those regulations. Because of what it is doing and its equitable representation of myself as a member of the community and of everybody else, its members would be the best people to set those regulations.

Mr. Allen: So you are happy with transferring to an appointed board, as distinct from the elected representatives of the people, the right and the authority, in effect, to regulate the moral quality of our society?

Ms. Rutherford: We said we wanted cabinet approval, so we are not saying they are going to do it without any sort of legislative representation or opinion. You have stated it one way, but yes, that is basically what I am putting forward.

Mr. Allen: I see. Thank you.

Mr. Elston: My question is basically along the same lines as Dr. Allen's with respect to the accountability of the regulations. Probably one of the problems we face is ensuring accountability in some way.

Mr. Borovoy spoke earlier. You might have heard some of his concerns about freedom of expression, for instance. In any event, it has always been my opinion that the more open the process of formulating regulations or legislation, the better you are apt to grasp what the community standards are.

You have indicated that you feel the board is more in touch with the situation. I suppose there are people in society who feel

it may be more out of touch; once it gets itself so far into a subject, it loses perspective. Perhaps that is what the Legislative Assembly is about: to ensure there is perspective provided in the regulation process or in the lawmaking process of this province.

What you have just made is an argument for law made by bureaucracy rather than by elected officials.

Ms. Rutherford: But is there no opportunity for perspective when these regulations go before cabinet for approval?

Mr. Elston: There is not for legislators. The cabinet operates under the veil of cabinet secrecy, and these types of public discussions are not available to the people in the province. What you have is a very closed shop.

You might be able to write a letter to the Premier (Mr. Davis), but you will never know whether that has been adequately aired. There is no way of telling--at least I can never tell--what happens at the cabinet table during meetings to discuss various decisions with respect to the orders in council to make appointments to this board.

Ms. Rutherford: Are you suggesting the Ontario Board of Censors is not representative of the people of Ontario, that it is made up very selectively?

Mr. Elston: How can you say a limited number of individuals representing eight million people is more representative of a cross-section of the public than 125 elected officials gathered together in a forum to discuss the problems?

I have to take issue with the question of the board--a limited number of appointments made by cabinet, made by order in council, made without representation to the legislative side of their responsibilities--as being somehow not open to public input.

Ms. Rutherford: Anybody could become a member of the censor board, but not everybody could become an MPP.

Mr. Elston: Yes, they can.

Ms. Rutherford: They could, but look at the process.

Mr. Elston: I would far sooner think that fewer people would be available to become members of the board than would ever be able to become members of the Legislative Assembly.

Ms. Rutherford: From my own personal experience as a mother and a wife living in a small town, I know I would have a greater opportunity of becoming a member of the board or getting a response from the board should I write to it, or whatever, than running for parliament.

Mr. Spensieri: You could work on certain campaigns.

Ms. Rutherford: No.

Mr. Williams: Ms. Rutherford, I think you would do a far better job of representing the community standards of this province than the members of the provincial Legislature, and I would recommend you highly.

11:40 a.m.

Mr. Elston: That is a bunch of garbage. I am about to become very antagonistic over some of the silly comments that this fellow has just made.

I want to pursue another line of questions, Ms. Rutherford, and that relates to freedom of expression. You heard that as part of Mr. Borovoy's argument, and the question of how he felt it ought to be dealt with in federal criminal law.

Could you comment for a moment on how you think this piece of legislation should work with criminal law? Have you thought of this as a companion piece to the criminal law? Do you see this as a solution?

Ms. Rutherford: As I said at the beginning, we have also worked to have changes made in the Criminal Code of Canada. The two films I spoke to you about, I Spit on Your Grave and Snuff, both fall under the Criminal Code as it now exists. One is customs prohibited and one is deemed obscene, yet they are still available in the community. The reason for that is the lack of a licensing system.

I can see where films and videotapes being given a licence, or whatever, would make it much clearer in the minds of video store operators and in the minds of the people who are renting these films or tapes as to whether they are actually legal or illegal. I see the two working hand in hand, one supporting the other.

Mr. Elston: Would you prefer to see a nationwide rating system, so that if you moved into Quebec, for instance, you would be assured that the type of viewing you received in Ontario was also available in Quebec, as opposed to just finding some kind of island of solace here in the great province of Ontario?

Ms. Rutherford: We have not taken it that far in our thinking. I have not thought of a censor board or film review board that would stretch across the nation, but I certainly know what I want here in Ontario, where I live.

Mr. Elston: If I asked you, then, for a definition of the types of things you do want for Ontario, could you give that to us? An expression--

Ms. Rutherford: A list?

Mr. Elston: Not a list; a sense of what types of things you feel are appropriate.

Ms. Rutherford: In film?

Mr. Elston: Yes, I think we should confine it to that here.

Ms. Rutherford: I think we want limited gratuitous violence--violence for the sake of violence, even with the idea of it being justifiable--when it is promoted as a lifestyle or as the only way to get out of a situation. I think we want to limit that. I would like to see more of other alternatives or opportunities being expressed in those kinds of films.

Films where degradation of a person takes place--it does not have to be sexual, but any form of degradation--should be limited. The use of children under 18 should not be allowed in pornographic materials, absolutely not.

Sexually explicit films do not bother me, as long as it is in terms of erotica--that is, sex with mutual consent--and not pornography, where there is always a sense of power.

I would say that basically sums up what I would like to see in film.

Mr. Elston: As long as there is a reasonable context in which violence and sexual activity are used, you are perhaps willing enough to have that portrayed as part of the message of the film.

Ms. Rutherford: Yes.

Mr. Elston: As long as there is an educational value to the film as well, I presume.

Ms. Rutherford: Right.

Mr. Elston: Okay. Thanks very much.

Mr. Chairman: Have you concluded, Mr. Elston?

Mr. Elston: Yes.

Mr. Cureatz: I would like to thank the witness for coming forward. Your concerns this morning, quite frankly, have been no different from the concerns of a lot of people which I have encountered in my own riding of Durham East, in both my riding offices, Bowmanville and Oshawa.

They have not gotten to the position that you have in terms of organization, getting a group together and coming forward. On an individual basis, time and time again, I have had people with similar concerns coming forward, and I appreciate very much your doing it this morning. Thank you.

Mr. Chairman: Ms. Rutherford, I would just like to add that all members get many letters. On this particular subject, I had more than 500 in my constituency office. We try to keep abreast and hear what the public is thinking. To both of you ladies, thank you for coming and to you, sir, for joining us. We enjoyed your presentation.

Mr. Elston: As a result of Mr. Williams's interventions we obviously do not have the greatest exposure; Mr. Chairman.

Mr. Chairman: I do not think that is a big problem.

ONTARIO PSYCHIATRIC ASSOCIATION

Mr. Chairman: Next we have Dr. Frank Sommers, of the Ontario Psychiatric Association. The clerk is distributing his brief.

Dr. Sommers: Thank you, Mr. Chairman. First, I would like to express our appreciation to you, the committee and Dr. Elgie for facilitating our appearance here this morning.

I am primarily addressing the issue of sexuality in films, as my professional involvement is as a psychiatrist subspecializing in the field of human sexuality, both in clinical practice and teaching. I am mostly involved with children as a consultant to the East York Board of Education.

As members of the committee look through this handout, they will notice at the outset I requested a meeting with Dr. Elgie to explain some concerns those of us involved in utilizing sexually explicit films thought we might have with new regulations. Indeed, even without them, we have such feelings.

You might briefly look through the position we put forward, which represents a consensus between individual practitioners and members of the Ontario Psychiatric Association, particularly the section of sexology.

We record our concern for the sexual health of the people of Ontario and express opposition to the plans of the government to give the Ontario censor board jurisdiction over classification of videotapes and films being utilized by qualified professionals in the treatment of sexual problems and in education.

Audio-visual teaching aids now are recognized and accepted internationally as having a most effective role in sex education, counselling and therapy. In our opinion, responsible professionals engaged in the field are in the best position to determine the type and nature of those teaching aids which might best benefit our students, clients, patients and, indeed, the public at large.

The next item is a letter from Dr. Brian Hoffman, chairman of the section on psychiatry of the Ontario Medical Association. This is item 3 in the handout.

Paragraph 2: The executive of the section on psychiatry, Ontario Medical Association, discussed this on June 11, 1984. They state: "We support the position of the section on sexology, Ontario Psychiatric Association, and oppose any restrictions or limitations on audio-visual aids which are used in the treatment of sexual problems or in sexual education."

Next is a letter to me from Dr. Elgie. I might mention that following this a meeting was arranged, attended by Dr. Elgie, Mrs.

Brown and a number of officials of Dr. Elgie's department. As you will notice, Dr. Elgie appreciates the point raised by us. The question remains, however. It appears that in his thinking we are considering two different items.

11:50 a.m.

My colleagues and I are gravely concerned that when these regulations are promulgated they will not in practice have the net effect of inhibiting, either overtly or implicitly, the use of materials that professionals otherwise would not hesitate to utilize.

"Unlimited commercial distribution" to the public is a term that covers many actual different possible distribution modalities, and I would like very much to address that subject somewhat in our discussion.

Just to go on, you will notice on the York University letterhead a release from Professor James V. P. Check, which was done during the spring and summer of 1984. It is a study of 117 Toronto men who viewed and evaluated sexually explicit videotapes that are now available. They analysed this material, and I would like to bring to your attention in summary form that they showed these 117 men sexually violent material, pornography, which contained scenes of rape, beatings and various other forms of forced sex and physical abuse of women.

Then they showed them a second class of material, which they classified as degrading or dehumanizing to women. In these, women were verbally abused and portrayed as hysterically obedient playthings who enjoyed degradation and were valued only as objects to be used for sexual gratification.

They also used a third class of materials, which they termed erotica, which were sexually explicit and in fact had never before been studied.

By the way, Dr. Check is co-author of a number of papers with Dr. Malamuth, who, along with Dr. Donnerstein, has done some of the laboratory studies related to these materials. They are frequently quoted by people who want to give themselves, shall we say, a veneer of scientism.

I say "veneer" because the laboratory studies always remain laboratory studies. To say that somebody feels a certain way in the laboratory setting is a long way from saying that the person would go out and commit a certain kind of act. That generally is not emphasized.

However, to run quickly through the conclusions, this study found that all three classes of materials--violent, degrading and erotica--were equally arousing to the men who were viewing them, which contradicts what is often said to be the case: that is, that men who view this kind of material always demand more and more explicit or more and more violent material. This finding tends to cast doubt on that opinion.

The men in the study also rated these materials, and of their own volition they rated those in the violent and degrading categories as more obscene. They felt that the third class of material, the erotic material, was more educational and more realistic than those classified as pornographic or degrading.

The fourth finding was that the violent material was most aggressive, degrading material was less aggressive than the violent material, and the erotica was nonaggressive, affectionate and nondegrading.

Fifth, the men in the study reported that they liked the men and women most in the erotic material. They liked them more than those in the class 1 and class 2 materials.

Sixth, 31 per cent of the sample said that erotica should be made available to anyone over 14 years of age; only 17 per cent felt that way for degrading material and only 15 per cent for violent material. Eighty-eight per cent of the men in the sample were in favour of some kind of control, such as the restriction of this kind of material to those 18 years of age and over.

Dr. Check relates on page 3, the last paragraph, "Perhaps the most important implication of these findings, however, is that they provide strong evidence that there is such a thing as erotica (at least from the male consumer's point of view), a type of material which seems to be acceptable to consumers, members of various feminist organizations (who have been arguing for some time that erotica is the only type of material which is not degrading to women), and, no doubt the civil libertarians."

They feel the material they term erotica is prosocial, is affectionately oriented and the men appreciate the difference between erotica and both the violent and nondegrading type of pornography, even to the point where they found the latter two types obscene and offensive, but not so the erotica.

Dr. Check concludes by saying: "Both the violent and degrading pornography were found to create feelings of anxiety, hostility and depression in the viewers. In contrast, the erotica did not create any negative feelings in the viewers. These aggressive feelings following exposure to violent and degrading pornography have important implications, since it is exactly these feelings that are frequently the precursors of violent acts."

The erotic material which was used by Dr. Check was material I have produced. It is partly material I submitted a couple of years ago to the Ontario Board of Censors for an opinion.

My primary purpose in doing that was to see what they would have to say about films I have had available since 1977 and which have gone around the world and which have been utilized by many different groups in treatment and education, not just in this country but also in the United States, Australia, South Africa, and many countries in Europe. Basically, the verdict by the censor board was that this material was not suitable for--as the term was--"unlimited commercial distribution" and that it could be utilized only with a special permit.

I was given an opportunity to appeal that and to speak to a number of members of the board. At some length, I explained to them the particular film that I refer to, Taking the Time to Feel. It was a 10-minute film showing a couple who had been married 14 years carrying out some of the exercising which we assign to people in sex therapy.

The film has been utilized in teaching medical students at the University of Toronto and a number of other community groups, for example, Ostomy Toronto, a group of people who have had cancer surgery and who want to deal with their sexuality. That is the kind of setting in which the film was used prior to asking for approval by the censor board.

I explained a number of these factors to the censor board, including the fact, for which I believe there is some evidence, that promotion of a wholesome sexuality in people can be a protector against violence. That is a different kind of subject but, for those who would be interested, I would be glad to go into it in greater depth.

12 noon

The fact is that one of censors, a gentleman perhaps in his late 50s, early 60s, popped up after my explanation and said, "You know, Dr. Sommers, when I look at that film all I see is a man pawing a woman." I do not think Ontario in 1984 is an acceptable place for that kind of regulatory authority to be practised in such a way.

I understand that things are changing, but my concern is that there are no guarantees built into the system. In my understanding, there is absolutely no other controlling body over a group of civil servants picked basically by one person, the chairman, who are establishing some control over materials for people who are professionals in the field and who have had wide experience with these materials. I feel there is an unfairness and a danger if that is allowed to go on.

My concern is that the current regulations seem to broaden the powers of the censor board, not to limit them. I would like to request some creative thinking about what can be done to deal with this problem.

During the past 10 years or so I have had an opportunity to be on a number of talk shows, interview programs and open-line programs with people calling in. Taking Time to Feel has been shown on television on two occasions--not in total but at least in part--once in front of a national audience through the CBC's Take 30 program and once on cable television, without a great hue and cry and alarm. However, the censor board, in its wisdom, said I could not use the film I had made without a special permit.

My most recent public experience was at a number of panel discussions with Dr. Elgie, June Rowlands and a few other people. We appeared on two panels in front of home and school organization events in Metro Toronto.

By and large, I think the audience understands these distinctions and is sympathetic to the issues I am raising. In one case, I showed the film in question and afterwards a number of people came up, including one of the trustees, to thank me for showing a film that was so positive in tone and so prosocial and affectionate. It showed people really loving each other. It was helpful for them to end on that note because previously they had been shown a film called Not a Love Story, which was very different in its impact.

By the way, the film I referred to that the censor board passed in the special permit category was a finalist in the American Educational Film Festival in the human sexuality category.

I believe there is a problem related to the fact that, with the spread of videocassette technology, those of us involved in therapy recognize that not everybody needs formal sex therapy, and that a number of people would greatly benefit from some elementary education. Most people have not had any sex education in their lives and sexual behaviour is learned behaviour.

The inclination for sex is inborn but its execution, the how, is actually learned. We find that the majority of the population has not had any sex education. Recent Gallup polls suggest that more than 90 per cent of the Canadian population support sex education in the schools. I have the specific reference here, should someone want it.

The point I am making is that in our judgement there is a case to be made for videocassette technology to be utilized, not just for looking at first-rate or second-rate Hollywood films, computer games and so on, but for educational enterprises. In their own homes, people should be able to learn how to build additions to their homes, how to insulate their homes, how to save on electricity or how to drive a car safely. Videocassette technology has made that possible.

By the same token, I suggest that those of us involved in sex education feel people should be able to educate themselves with respect to sexuality in the privacy of their own homes, without some bureaucratic body passing judgement on whether the educational material is acceptable.

There is absolutely no evidence, to my knowledge, that erotic material of the type I am talking about--I and am willing to show to this committee, by the way. I made this offer when we made the appointment, but I was told no equipment would be available and that sort of thing. Any members of the committee who would like to see this material should name the time and place and I will be glad to share this material with them.

Some of this material is based on the book Becoming Orgasmic: A Sexual Growth Program for Women, by three members of the State University of New York at Stony Brook. They are colleagues and responsible professionals. It is a very fine program that has helped many women reach orgasm, which is a very serious problem for many citizens of this province.

I appreciate that it is not generally talked about, but the impact of the decisions made in the Legislature will affect whether women who have this problem will have unrestricted access to this kind of material, this book and the videotapes that come with it, for example.

I have had discussions with a reputable drug chain, which is the largest in the country, and it is very supportive of the notion of distributing our educational sexual videotapes. Whichever way these amendments go, I would plead with you--I believe the support of the medical profession is behind this request by the evidence in front of you--that some way be found to prevent the kinds of difficulties we have encountered in the past from being encountered in the future.

I add in closing that I have had discussions with members of the pornography squad and shown them this material. They have no problem with this material but their hands are tied, they say; if somebody makes a charge, they have to lay a charge. None of us wants to be in a position where we are unprotected. Any group can come along--all it takes is one person--and create all kinds of difficulties; but they cannot if we believe any court would find our material contravenes the laws of this land, not for a moment. Who wants to go through the process of being charged? This is a very serious matter. That in itself is punishment enough.

These are some of the major points I wanted to raise for your consideration. Perhaps they have some questions I could answer.

Mr. Chairman: Dr. Sommers, before I go on, you said you had some problems with the censor board and its composition of civil servants. The only civil servant I am aware of who is on the censor board is Mrs. Mary Brown. The rest of the board is composed of lay people from across the province; so they are not "civil servants."

I think Mr. Williams had a question or two.

Mr. Williams:~ On behalf of the minister and for the record, Dr. Sommers, you indicated that you had been in correspondence with the minister on this issue and that your particular concern was the regulation, control and possible censoring of films you would use for your professional purposes.

I want to make it clear to the members of the committee, by way of the minister's response to you by letter on May 25, that while proposed legislation will regulate the unlimited commercial distribution to the public of all videotape films, he did indicate that films used by qualified professionals such as yourself for counselling and therapy are obviously a privileged and separate issue. I can assure you the regulations will so reflect that recognition when they are developed and become part of the legislation to be enacted.

Dr. Sommers: My concern, sir--I am sorry; I do not know your name.

Mr. Williams: Williams.

Dr. Sommers: Mr. Williams, my concern is that in your comments you make no reference to the points I made with respect to education enrichment, the materials that responsible professionals would like to use, for example, in a mass educational way, which we are discussing. Is the intent of these regulations to cover that as well? There is a difference between sex therapy proper, sex education and sexual enrichment.

If we distribute videotapes by a drug chain and that is deemed as unlimited commercial distribution, which it could be, even though the pharmacist is putting it out and so on, one could say that Aspirin is in unlimited commercial distribution even though you can only buy it in pharmacies and maybe in some confectionery stores. That is an issue, sir, I wonder if you could address.

12:10 p.m.

Mr. Williams: I do not think I or the rest of us are in a position to go into the specifics today. I can only give you the assurance, as I think you are aware, that the ministry staff have under consideration all aspects of the exercise of the professional skills of you and your colleagues. We will take those matters into account in developing the regulations.

I am sure that through consultation, if not with yourself then with others in your field, the appropriate wording will be introduced into the regulations to recognize the legitimate application of your skills and the use of videotapes for that purpose.

I do not think we can realistically deal with the specifics today, but they are being addressed. That is the assurance I can give you today.

Mr. Chairman: Mr. Allen and Mr. Elston have indicated they have questions.

Gentlemen, we have two more groups to deal with by 1 p.m., and I hope we are going to accommodate them.

Mr. Allen: I would just like to respond, in the presence of Dr. Sommers, to what I understand to be his problem and to what I thought I heard the chairman of this committee say, that the regulations will accommodate what Dr. Sommers is asking for.

Mr. Chairman: Excuse me. Just for the record, it was not the chairman who said it; it was the parliamentary assistant.

Mr. Allen: I am sorry. It was the minister's assistant.

As I understand it, that is precisely the problem. From your point of view, this will get locked up in a sort of medically restrictive context in the regulations. The problem with not seeing regulations in advance is that he cannot discuss, debate and respond to them.

The minister's assistant announced to a previous witness that those regulations would be coming before the Legislature. To this date, we have not been told that this would be the case. In any event, we have not been told that they would be coming in a form that would enable us to debate them in a significant way which would have any effect on the passage or nonpassage of the bill.

If I heard you correctly, it was to say that in contemporary Ontario society, people engage in a great deal of self-education, and that presumably this will be more the case with the kind of information explosion that is around us. Therefore, any bureaucratic limitation of the processes of positive public self-education is something to be massively deplored. Is that essentially what you are telling us?

Dr. Sommers: I think you raise a concern, Mr. Allen, which I do share. I have great admiration for Mr. Elgie as a colleague. I believe he understands the issue. My concern is that Mr. Elgie will not be around for ever, at least in this position. How do we know what the future will bring?

I do have some concerns first of all about having to face regulations that we do not see beforehand. Second, you are the legislators; you can see better than I can what alternatives there might be. I do, however, share some of the concerns you are voicing.

Mr. Allen: I gather you have no problem with licensing in a general sense, as long as the licensing does not preclude the kind of activity you are talking about for the sorts of films you are speaking about.

Dr. Sommers: I do not know any of the details of this licensing; so I really cannot comment. If a licence is going to cost \$10,000, yes, I have grave concerns about it--even if it cost \$1,000, I suppose. I cannot comment on something I know very little about.

Mr. Elston: Mr. Chairman, I just have a couple of questions.

From the presentation, I gather it is very difficult for you to separate what material might be used for educational purposes from that which might be used purely for entertainment. Is there any way of separating or segregating those two classifications of material?

Dr. Sommers: I would say that those of us who deal with this material daily do not have much difficulty in looking at something and deciding whether it has some educational value. In fact, the best educational material has some entertainment value, because it motivates people. That is well known in all spheres of education.

Frankly, there are relatively few people who are in the position of working with people who have sexual problems, day in and day out. You may be familiar with the story of Michèle White.

She was quoted in the article "Behind the Screens at the Censor Board" in the Globe and Mail, October 13, 1984. She is one of the few sources of inside information, and she says:

"The censor board cannot make distinctions. It does not distinguish between, say, the positive role models of feminist erotica versus pornography. It does not take scenes in context when they conflict with the cutting list. That is not their mandate."

I submit that the cutting list originates with a provincial civil servant. If that is not the case, I would like to be enlightened as to who carries out the actual cutting list instructions. I agree citizens may be tapped on the shoulder to serve, but as far I know, the cutting list comes from a bureaucrat.

She goes on to say, "That is not their mandate, but even if it were, an arbitrary group of people cannot possibly make fair or consistent decisions about what others should see."

Michèle White concludes by saying, "In answer to the question 'Do you personally believe in censorship?' when one legislative committee asked her"--she is referring to Rosemary Sexton, "an outspoken censor who quit in 1980"--"Sexton was quoted as replying, 'I did before I joined the Ontario Board of Censors.'"

This is information from inside the censor board. I am very reluctant and so are my colleagues to give any power to a group of people who deal with situations out of context. It is like the man who says, "All I see is a man pawing a woman." He was totally oblivious even to my verbal explanation in my appearance before the board.

Something has to be done at this point. That is what I was told, I think by Corporal Kirkpatrick, who will appear in front of this committee. He said, "The ball is in Queen's Park's court. It is really up to Queen's Park."

Mr. Elston: I would like to ask one more question along those lines.

I read the account of the study of the three types of classifications of the material and the results of that. In your opinion, does the showing of this material become an educational experience as long as it is balanced, if I can call that sort of presentation balanced? Or are you trying to create an impression of what is acceptable or not acceptable by the presentation of the material?

How do you prescribe for your clients, for instance, what you would consider a balanced repertoire of material?

Dr. Sommers: I use only the third class of material in my work. I believe only that is appropriate. I do not use any material that is degrading, nothing other than consenting, feeling-oriented, warm, loving human sexuality. I do not use material that utilizes models, but real people. I would say these are documentaries.

Mr. Elston: What about for the purposes of distribution for somebody who does not attend a counsellor? Would you then say that only the erotica should be distributed to the people at large?

Dr. Sommers: I believe that those of us who are accountable--for example, I am accountable to the Ontario College of Physicians and Surgeons. I believe I should have a right as a professional and as a citizen to decide what I believe would benefit people.

Mr. Elston: In other words, you would prescribe certain material for your clients.

Dr. Sommers: That is right.

Mr. Elston: But I am asking the further question about the availability of material for those people who do not attend a professional for that prescription.

Dr. Sommers: If material is approved for distribution to those of us who can be held accountable and responsible, I am not suggesting that only people who come to me as a client or patient should have access to it.

This is a very important point, in an age of widespread use of videocassette records and when self-education is common, especially in a very sensitive area like sex education.

Condoms at one time could be purchased only from a druggist. How many young women got pregnant because the young fellow was ashamed to go up to the druggist? Now it is up front; it is self-service.

I am not suggesting we go into self-service, probably because there would be a problem with stealing, among other things. However, I do believe members of the public at large should not have to classify themselves as patients. They might say: "I am curious about sexuality. I would like to see some material that is available at this drugstore; I hear it is sexually educational."

It seems to me there should be some onus on the distributor to accept material only from what he considers to be qualified people. That might be one way of ensuring it.

12:20 p.m.

Mr. Elston: It might be appropriate, then, to have a classification of material in the sexually educational category or whatever so people would understand the nature of the material was such that it would be used in an educational surrounding.

Dr. Sommers: Yes. I think it would be useful, but the question then becomes, who does the classifying? I am suggesting that those who know this material best are in the best position to do the classifying.

Mr. Elston: I have just one other question. I realize the time is going. It is really to the parliamentary assistant.

Like Mr. Allen, I had understood that the regulations would be available. I understand they are to be available some time on Friday, I think, when we do clause-by-clause.

Mr. Chairman: The agreement was that the regulations would be available when we do clause-by-clause in the House next week. That has been the agreement; so everything will be there up front for the public to see.

Mr. Elston: We have been told that the regulations are not ready yet. Is that what I am to understand? Or are you just not prepared to discuss their general intent for the purposes of our witnesses other than to say: "Trust us. We will do our best"?

Mr. Williams: As the chairman has stated, the understanding and agreement among the House leaders was that after the public representations at committee level, the committee then would return the matter to the House and next week, when the bill is before the House in clause-by-clause discussion, the regulations as prepared would also be part of that discussion and debate process.

Mr. Elston: Will they be subject to amendment during the House discussions?

Mr. Williams: I presume they will be equally available for comment.

Mr. Elston: It is unusual to do any amendment of regulations.

Mr. Williams: It is a very unusual situation in the sense that it is probably establishing a precedent. If this is what has been agreed upon among the House leaders, I do not think anyone will question it or quarrel with it, because I think this is what the opposition members have asked for.

Mr. Elston: Are those regulations also to be distributed to the people who appear in front of us as witnesses?

Mr. Williams: They will not be available before the House deals with the bill next week.

Mr. Chairman: Thank you, Dr. Sommers, for coming to let us know what your concerns are.

We have two other groups to deal with. Unfortunately, Mr. Elston and Dr. Allen, we are running 20 minutes late. Do you suggest that we divide the available time between the two groups?

Mr. Elston: I think we should hear the presentations.

Mr. Allen: I do not know how lengthy each presentation is. I guess I had not looked at your schedule carefully enough yesterday, but I think the standing committee on social development might begin an hour earlier to get through an hour earlier. I know we are under some pressure, but perhaps we can judge that as we go along.

Mr. Cureatz: Mr. Chairman, why do we not just hear both groups one after the other; then questions can be asked of either group.

Mr. Chairman: Is that agreeable, gentlemen?

Mr. Elston: Yes. I think we should hear the presentations.

Mr. Chairman: With that, we will move on to the Ontario Film and Video Appreciation Society.

ONTARIO FILM AND VIDEO APPRECIATION SOCIETY

Mr. Chairman: Thank you for coming. Would you please identify yourselves.

Ms. MacDowall: I am Cyndra MacDowall.

Ms. Gronau: My name is Anna Gronau.

Mr. Poole: I am David Poole.

Mr. Chairman: Would you please continue with your presentation? Is it oral? If it is oral, please continue.

Ms. Gronau: Yes, Mr. Chairman. My colleague Cyndra MacDowall has a sore throat. I am just going to read from her prepared text.

Films and videotapes are unique in the province of Ontario. Unlike any other medium of art or communication, they cannot be shown to the public until a government-appointed board of censors has given permission to do so. This is discrimination against these media. It is also a case of films and tapes being considered guilty until proven innocent. Similar intrusions against theatre, painting, the printed word or any other form of expression would be unthinkable in our society.

Mr. Chairman: If you have an extra copy of the text, we could get it photostated and distribute it to the members. Oh, I am told everybody has it. I am sorry. Carry on.

Ms. Gronau: The censor board may demand cuts from any tape or film before it can be shown, or may ban it outright. The board's rationale is that precensoring will stop pornography and protect children from viewing unsuitable material.

In fact, prior censorship, in our view, is ineffective in fighting pornography. If the board cuts pornographic films, the exhibitor of those films is somewhat protected from prosecution under the federal obscenity laws, but pornography continues to be produced, and is circulated, underground.

As for the protection of children, a classification system that restricts works on the basis of age is adequate for keeping problematic subject matter from children. Classification also informs adults of a film's content so that they may exercise their

own choice. Cutting and banning are not necessary to attain either of the ends espoused by the board, neither are they effective.

Prior censorship of film and video is not merely an ineffective means of controlling certain perceived social harms, however. In practice, it has considerable negative consequences. The censors are free to approve, rate, cut and ban on any grounds they choose--even political, aesthetic and religious, if they should wish.

In recent years it has become clear that our fear of this practice is not ungrounded. A Message From Our Sponsor, an experimental film that criticizes the exploitation of women in advertising, has been barred by the board from being shown uncut in this province. A feminist film entitled Born in Flames showed women resisting harassment. The censors attempted to make cuts in this film because, in their view, it implied rape.

More recently, the censors' powers were the cause of a cancellation of a video art exhibition. The Burlington Cultural Centre, rather than submit work to the board, decided instead not to exhibit the work. The list of infringements on the freedom of expression of legitimate producers and organizations goes on.

There have been half-hearted attempts by the censors to appease some cultural organizations through a process called "examination by documentation." Apart from easing bureaucratic pressures slightly, however, this system is no less oppressive and no less a form of prior censorship than any other method.

In fact, exhibitors are still required under this system to pay money for censorship and are even further restricted in that "examination by documentation" allows for exhibition on a one-time, one-place basis only. The board demands the right to see any film or tape submitted by this method and can cut and ban as always. Furthermore, admittance is restricted to adults only.

Both the Ontario Supreme Court and the Ontario Court of Appeal have recently ruled that the censor board is acting in violation of the Charter of Rights in the new Canadian Constitution. They found the censor board had no legal standards upon which it bases its rulings.

This means that decisions to cut, ban or rate films and tapes are totally arbitrary and based on the whim of the officials of the censor board. Given the challenge to the board's extensive powers that the courts have made, it is doubly offensive to us that the government of Ontario has now introduced Bill 82, a series of amendments to the Theatres Act.

The Ontario Court of Appeal granted the censor board a stay of execution, during which time it could decide to appeal the ruling or draft new laws that would be in keeping with the justices' decision. Having chosen to appeal to the Supreme Court of Canada, the Ontario government seems to want to have it both ways. They have even asked the Supreme Court to rule on the provinces' right to censor films. Despite court battles, lobbying, briefs and petitions, legislation has been drafted with no

consultation of the community that has protested current practices so vehemently.

Recent statements in the press by representatives of the government and the censor board have hinted at possible exemptions or special status for cultural organizations. However, there is no mention of such matters in Bill 82. Claims that the censor board does not want to interfere with the freedom of expression of cultural organizations are belied by the content of these proposed amendments.

12:30 p.m.

Bill 82 is even more oppressive than the legislation it is designed to replace. If Bill 82 becomes law, arts organizations and other nonprofit producers, distributors, and exhibitors will suffer the most in terms of new infringements upon their freedom of expression. Ultimately, however, it will be all Ontarians who stand to lose if Bill 82 goes through.

You have copies, so I am not going to read the section numbers. It is a waste of time since you can see them anyway.

To begin with, we find it very euphemistic that the Ontario Board of Censors is going to be named the Ontario Film Review Board. I think that is clear.

Under Bill 82, the board has the right to censor not only films and tapes that are exhibited but also those that are distributed "for direct or indirect gain." There is no definition of "indirect gain." It could be political gain, financial gain or social gain. This section means that even films and tapes distributed for noncommercial and private viewing must be submitted for board approval. Thus the board will have broad powers not only to classify but also to cut, ban and restrict just about all film and video made available to anyone in this province.

The next point is that even though the Ontario Court of Appeal stated that the lack of standards in the act was unconstitutional, no standards are laid out in the new act. Instead, what we have is a situation where it will be cabinet that will make the decisions on what the standards are. It can make those decisions at any time. It can change its mind and ask for no input from the public or from the opposition.

The informal guidelines the censor board now has seem to be very vague and broad and we do not see any indication they are going to change. We have had many problems in the past with those vague and broad guidelines.

Bill 82 sets out the powers of the censor board to limit exhibition of a film or tape to a specific time and a specific place, if it wishes. They have been doing this in the past and it has been extremely problematic to smaller organizations. We are very disturbed to see it entrenched in the bill.

The next section exempts Bill 82 from the Statutory Powers Procedure Act. We are very disturbed by this. The Statutory Powers

Procedure Act requires that agencies and boards behave within certain legal parameters and we do not see any reason the censor board should be exempt from that.

Under the amended Theatres Act, a board decision may be appealed. However, the appeal process we are getting through Bill 82 says one simply goes from one set of board members to another. Our understanding of the standard practice for legal appeals is that they go to a higher court. Essentially, we submit, there is no legal appeal procedure in Bill 82.

Like the standards for censoring films and tapes, standards for censoring advertising of films will be set out in regulations where they will be subject only to cabinet approval. Bill 82 does not give any indication of the criteria that will be used in the new regulations.

Under Bill 82, the exact powers of inspectors are spelled out more clearly and specifically with regard to seizure of equipment, films and tapes. Seizure of goods is permitted even if no charges are laid. We think this is unnecessary and excessive control. It should be sufficient to lay charges if a law is violated. Seizure of goods does not serve any purpose and provides undue opportunity for harassment.

The present Theatres Act requires that a theatre that exhibits standard film--that means 35mm film--has to be licensed. Bill 82 will extend the licensing requirements to include any kind of film or video. This means that any gallery, screening room, cinémathèque or other establishment that shows primarily film and video must be licensed.

The amended Theatres Act will give the theatres branch director the power to refuse to issue a licence if "the applicant is a corporation and the past conduct of an officer, director or shareholder affords reasonable grounds for belief that the applicant will not comply with this act and the regulations." We think this is an unnecessary and excessive restriction. Since there is not even a definition in the bill of what "reasonable grounds for belief" are, the potential for discriminatory application of this section is immense.

For instance, my colleagues and I have been protesting the Theatres Act for a good number of years. Does that mean the organizations we are associated with lose their right to exhibit film or video?

If an organization does not primarily use its premises for such exhibitions, the new law will require that any equipment itself be licensed. Thus it ends up making it impossible for anyone to exhibit film or video in the province without a licence for either equipment or premises.

Finally, Bill 82 says the censor board's decision on appeal is final. That is from the point of view of the person submitting the tape or film. However, the censor board itself can change its mind whenever it likes if it is of the opinion the criteria prescribed by the regulation respecting subject matter or content

have changed since the film was originally approved and classified. Basically, that means you never know where you stand.

It seems to us it is clear from this section that standards of living are intended to remain a matter of opinion and subject to change with no concern for consistency.

That is our final objection to Bill 82. We will be glad to answer any questions.

Mr. Chairman: Thank you for your presentation. Are there any questions?

Mr. Allen: I just want to express our appreciation to the Ontario Film and Video Appreciation Society for so detailed a brief and for the specific comments on elements of the bill, which helps us debate it that much more coherently and helpfully. Thank you very much.

Mr. Chairman: Thank you, Mr. Allen. Anything further from any other member of the committee? Have you any comments on behalf of the ministry, Mr. Williams?

If not, we thank you for being here and giving your presentation. It has been very helpful.

We now have Village Video, represented by Mr. James Hoffman.

Ms. MacDowall: Mr. Chairman, just before we break here, could I inquire about the anticipated date on which this committee's report would be available? I know you are talking about going through the bill clause by clause next week in the House. When would the report of these hearings be available?

Mr. Chairman: We have not been asked to make a report. We have just been asked to have hearings so members could be aware of the situation.

Mr. Elston: Maybe she is asking about the transcription of the proceedings here.

Ms. MacDowall: Yes.

Mr. Elston: I do not know when they will be available from Hansard.

Mr. Chairman: As soon as they are available we can have them for you. Friday will be the last public hearing day, so you will probably have them on Monday. You could get in contact with the clerk or my office.

The clerk informs me he has your address and will be in contact with you.

Ms. MacDowall: Thank you.

VILLAGE VIDEO

Mr. Chairman: Mr. Hoffman. Is it a written presentation?

Mr. Hoffman: I have a few things written down and there is a flyer going around which I think will come up a bit later.

Theoretically, I do not represent anyone but myself. I cannot speak legally for other video stores, but I have talked to many others and they feel as I do, that yes, there should be some sort of censorship. I do not think anybody in this room could honestly say he agrees with child pornography, bestiality, etc.

You will have to excuse me, because I am not a very educated person, so I will be using very lay terms, as it were.

I just want to bring to your attention the situation of the video stores themselves. I realize you are concerned with theatres as well. Video is a completely different market from the theatre since it is for home use only. It is not meant for people to come in off the street and for a group of people to view.

12:40 p.m.

I think I have gone a bit out of my way. I went to Ottawa, and what happens is illustrated by what I have here; I have a few copies that can be passed around. You will notice that package is shrink-wrapped. This is the way the retail stores get them. Once we open that package we are stuck with it. The distributor will not take them back. That particular film is not that expensive, but they run on average from of \$70 to \$100 a movie.

I do not feel the retailer should be stuck with that sort of bill, because, in essence, if that film is not viewed before some sort of board or group that can analyse what is considered legal and what is not considered legal, the video stores--in my case I have added up \$23,000 in bills in the past three months. I do not think it is fair, and in that sense I tend to agree there should be some sort of censorship to a degree.

Where we are running into problems, as are other video stores. I think there is a representative of Project P here.

Mr. Chairman: He will be here on Thursday or Friday.

Mr. Hoffman: My apologies. There is no set law. A police officer can walk into my store and exercise his personal opinion. Mind you, a police officer does not have a personal opinion, but one said, "In my personal opinion, I find these offensive." Without viewing them--he himself had not viewed them--he takes down \$4,000 worth of my movies. They have tied them up in court for three years now. He is now asking for an adjournment, so I am losing money, not because of my fault. As you can see, that movie is shrink-wrapped. I can do nothing about it, if you follow me.

I also feel it should not be left to an individual to make that decision. It must be a group. I have talked to different people. I will not mention names. Because I am not well educated,

I do not think it should be left to BAs and people with degrees. That is totally ridiculous as far as I am concerned.

If this board is functioning properly, I feel there should be different sectors of people. There are pros and cons, as there is to everything. If you would bear with me for a second, I would just like to breeze through my notes.

Again, I say those films come in shrink-wrap. If they do go before a board to be reviewed, watched, edited, cut or whatever, that is fine because it is fair to the retailer himself. For us as retailers, to take them, buy them, look at them and say, "No, that is no good" and to indirectly throw them away--because that is what they are asking us to do--I think it is unfair of the government or the province to ask us to do that.

As small retailers, we cannot afford to do that. I do not know how Toronto stores operate. They might be making a million dollars a year, I do not know. All I know is, in my particular situation and in other situations around my area, we do not make that kind of money. We cannot afford that sort of thing.

I cannot afford to have police officers walk in and charge me on a whim. I sympathize with the police department because they do not have any actual guidelines.

The reason I passed that flyer around is that it came from British Columbia. They are asking me to tell my customers to buy this stuff. As you will notice, it says there, "Triple X-rated adult videocassettes" available through the Canadian mail system. The minute I tell my customer this, sure he might buy it, but I am breaking the law because I am theoretically making it available to my customers. Who is held responsible? I am. Meanwhile, out in British Columbia they can get away with this.

The way I see it, let there be some sort of censorship; I agree. If you will notice, there is no rating at all on any videocassette boxes that come in. Once in a while you will get one from Paramount or Columbia that is a major release and it says it is PG or restricted. We go by that guideline.

I do not think I am being ridiculous. These are the movies that have come out in the past two years. They expect me to view each and every one and rate it myself. I think that is a little farfetched. I think people are dreaming.

If you have any questions, I probably have answers for them as we go along, but I hope I got my point across to you. Excuse me if I sound a little arrogant. I am very upset about the whole thing.

Even going above you, our Solicitor General (Mr. G. W. Taylor), for instance, is willing to prosecute here, but the other one in BC is not willing to prosecute. Take a day off, get together with the Solicitor General and make some sort of decision. I realize it is impossible, but--

Mr. Elston: They are hardly ever at work.

Mr. Hoffman: It would work.

Mr. Chairman: He said, "They are hardly ever at work."

Mr. Hoffman: Okay. I think it is time somebody got off his butt and did something. I sympathize with everyone concerning freedom of speech. I have quotes here. Voltaire said, "I disapprove of what you say, but I will defend to the death your right to say it." Sure, I agree with that. Winston Churchill said, "A free press is the guardian of democracy." Sure it is, but do not pass the buck.

All I am asking as a retailer is for someone to sit down and say: "This is the line. We are going to draw it right here. Kiddie porn is way over here, bestiality is over there and sex and violence are right here. That is where we draw the line." But tell me about it.

As a retailer, I do not have access to that information. Mary Brown, as a matter of fact, has given me a list of movies and how they are rated. That is wonderful.

I took a trip down to Ottawa last week. I am sorry I do not have copies of all this. I had to fight for three days at high cost to get what has been banned--this is in the last month--in Canada. All distributors have to do is get on the phone and ask, "What is banned this month?" That is is. They will tell them over the phone. They will not tell a retailer. I had to pull teeth and fight and kick to get this stuff, but I got it.

I do not think it is fair to dump it on me. I do not think I should have the \$23,000 or whatever it is in bills. All I am asking for is a fair ruling and some sort of guideline.

I will use a bad example, but it is an example. You are driving along at 30 miles an hour. You know the speed limit is 30 miles an hour, so you are going 30. A police officer with a radar gun jumps out and says, "Today I happen to feel that the speed limit is 25 miles an hour." Do you agree with that? That is exactly what they are telling me. They are saying that today they are legal, tomorrow they are not.

Mr. Chairman: Mr. Hoffman, I think you have made your point. You have certainly raised your concerns from your point of view as a dealer, not a distributor.

Mr. Elston, do you have a question or two?

Mr. Elston: My question is directed more towards Mr. Williams and whether our regulations will deal--

Mr. Allen: Mr. Chairman, on a point of order: I think the suggestion was that both groups might be questioned. Perhaps in the question period the Ontario Film and Video Appreciation Society could come forward, if there are any of them left. That is the fair way; that is what we said we would do. They should be present for questions if necessary.

12:50 p.m.

Mr. Elston: My question is to Mr. Williams. It concerns this flyer which Mr. Hoffman has provided us with. Could he indicate to the best of his knowledge whether the regulations would deal with this type of distribution list? It seems the fellow is actually in the business of distributing, but obviously Mr. Hoffman is the one who is on the line in terms of the question of his licensing and whether he has been infringing against the regulations as they may be drafted.

Mr. Chairman: Excuse me, Mr. Williams, before you start would you please identify the gentleman from the ministry who just joined you?

Mr. Williams: He is Mr. Gerry Cooper, one of our legal counsel in the ministry.

Mr. Elston: I did not hear the identification.

Mr. Williams: He is Mr. Gerry Cooper, legal counsel with the ministry.

I have to distinguish between the film itself and publication of material such as this, which identifies the content of the films that a distributor proposes to distribute or a retailer proposes to make available to his customers.

You would know whether you were violating the law as proposed if the videocassette itself had the classification code on it. If you did not have that film with the classification code, you would be dealing with film that had not been classified by the Ontario Film Review Board. The nature of that identification is a sticker that would be put on the videocassette itself.

Mr. Elston: What I am getting at is whether this type of flyer represents, in your definition of things, a distribution or something that ought to be licenced to this Thomas J., as he is described in the flyer, or whether Thomas J. ought to be licenced for the purpose of mailing this distribution list here in Ontario.

I realize it is in British Columbia, but he is mailing it here to Port Perry.

Mr. Hoffman: Could I interrupt you for a second? If you will notice, on the second page there is a Toronto exchange toll-free number. I took it upon myself and, yes, I am going to admit that I have broken the law, I called this place. If you call this place and give them your Visa number, they will put it in the Ontario mail system and mail it directly to your door.

If that is okay in Ontario, something should be done at that end. If they are going to do it here, it should be done right across the board; do not pull favourites on us.

Mr. Williams: If the distribution is taking place in Toronto, as you are suggesting, then it would have to be subject to licensing provisions of the act.

I see there are two phone numbers on the material you have distributed. One is a Vancouver number and the other is a Toronto number. If they are available within Ontario, as suggested by the Toronto telephone number, they would appear to be acting in violation of the proposed legislation.

Mr. Elston: So even if they did not have a Toronto number, for instance, you would be unable, by the regulations, or by this piece of legislation, to control the dissemination of the material listed here under the current proposed amended Theatres Act, even though their advertising has been in existence for the purposes of trade in Ontario. As long as their number is in Winnipeg, Quebec, or any place east and west of those two locations they could not be prosecuted for distribution in the province.

Mr. Williams: As the minister said during his estimates in dealing with this particular subject--and this is a difficult area in which to deal because it does deal with federal legislation and interprovincial trade--it is a complex area within which to work.

To clearly define our areas of responsibility: We have certainly expressed concerns to the British Columbia authorities, where a lot of this film material is emanating from, indicating our dissatisfaction with the extent to which this type of film is coming into Ontario. Also, we have had to consult with the federal authorities to make them aware--not that they are not--of the magnitude of the problem.

However, it would appear that it is going to require a joint provincial-federal initiative to curtail this type of shipment of films into this province which are not acceptable for distribution in this province.

Mr. Elston: But if an individual who resides in Vancouver, as in this example, is advertising actively that he trades and deals in the material which the Ontario Film Review Board says is unacceptable for distribution here, you will be unable to deal with that person as carrying on the business of distribution in Ontario.

Mr. Williams: It is my understanding that if the evidence can be produced that the individual is distributing the film in this province, then he would be subject to prosecution if he is violating the proposed legislation.

Mr. Spensieri: If I may, I would like to ask a supplementary of Mr. Williams in the presence of counsel. Can this legislation not be adapted to cover not only the film itself but also the descriptive material on paper? Is that not the basic issue here, that we cannot have any real control over descriptive material which merely describes a particular tape and which is not in itself a tape or a film? Is that the understanding?

Mr. Cooper: I am not quite sure I follow that question.

Mr. Williams: The advertising material itself.

Mr. Spensieri: The material here is only descriptive of the product. It is a contract, if you like.

Mr. Cooper: There is a prohibition in the act respecting advertising, but I think the issue is whether the distribution is in Ontario. I believe the act could control the advertising provided the regulations covered it. But if you are going to go into the issue of ads in the personal columns just saying, "Movies available in BC," using some type of code for what are considered to be X-rated films, then the distribution is in BC. I do not think that type of advertising can be controlled and it is beyond the jurisdiction of the province to regulate that.

Mr. Hoffman has a question.

Mr. Hoffman: Yes. You are theoretically right, because I have checked out that law. There is no law against advertising this stuff in the newspaper. That is fine. That was directed directly to my store. I can disregard it, or I can just mention it. All I have to do is theoretically mention it to my customer and I am liable because I am a dealer. I think that is not right.

Mr. Cooper: Excuse me, Mr. Hoffman. If you are not distributing the film, then you are not in any way liable.

Mr. Hoffman: No. But I am offering, which the police force at this time considers as a sale--

Interjection: He is right.

Mr. Hoffman: --and you cannot argue that, because I have gone through six months of this.

Mr. Cooper: Under the new provisions--

Mr. Hoffman: We both know marijuana is illegal. Am I correct? I am just going to use that as an example for a second. If marijuana were legal in British Columbia, and I turned around to say, "Look, it is legal in British Columbia; here is a flyer and here is the address," I would be giving you that information and I would be liable for offering you that material.

Mr. Spensieri: But you are mixing apples and oranges. One side is a criminal prosecution and the other side is a--

Mr. Hoffman: This is what I am saying. The burden is falling on the retailer.

Mr. Spensieri: We are not concerned with criminal prosecution.

Mr. Cooper: If the retailer restricts his business to films which have been approved and which have an identifying sticker--

Mr. Hoffman: Which have an identifying sticker?

Mr. Cooper: That will be the case--

Mr. Hoffman: When?

Mr. Cooper: --once Bill 82 is proclaimed in force.

Mr. Hoffman: Okay. What do we do until then? It is an issue to me; it may not be to you. I do not mean to be arrogant, but I feel very strongly about this.

I get an accumulation of approximately 40 movies a week, and that is being very mild. People cannot expect me to sit and view all of them before I put them out on my shelves. It is physically impossible to do; there are not that many hours in a week. To run my store, do I have to watch each and every movie before I can put it on my shelves?

Mr. Chairman: Mr. Hoffman, I think the committee is well aware of your particular concerns. We have come to the end of today's hearings, and I hope we will be able to discuss this a little more fully among the committee members either Thursday or Friday. However, we thank you for coming, and we thank you all for appearing.

The committee adjourned at 1 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

THEATRES AMENDMENT ACT

THURSDAY, DECEMBER 6, 1984

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Allen, R. (Hamilton West NDP)
Breaugh, M. J. (Oshawa NDP)
Elgie, Hon. R. G., Minister of Consumer and Commercial
Relations (York East PC)
Reed, J. A. (Halton-Burlington L)

Clerk: Carrozza, F.

From the Ministry of Consumer and Commercial Relations:
Crosbie, D. A., Deputy Minister

Witnesses:

From the Anglican Diocese of Toronto:
Brown, Rt. Rev. A. D., Suffragan Bishop
Cuyler, Canon R.

Massman, Rev. B., Director, Office of Communications, Roman
Catholic Archdiocese of Toronto

Sinzel, J., President, Video Retail Association of Canada Inc.

Kirkpatrick, Cpl. R., Project P

From Canadian Film makers Distribution Centre:
Armitage, K., Chairwoman, Board of Directors
Renouf, S., Administrator

Wilson, F., University of Toronto Faculty Association

Epstein, H., Executive Director, Ontario Federation of University
Faculty Associations

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, December 6, 1984

The committee met at 3:33 p.m. in room 151.

THEATRES AMENDMENT ACT
(continued)

Resuming the adjourned consideration of Bill 82, An Act to amend the Theatres Act.

Mr. Chairman: Good afternoon, ladies and gentlemen. We are here to continue the public hearings of Bill 82, An Act to amend the Theatres Act.

To the members, before we start, I would just like to make an announcement that the justice committee will be sitting next Wednesday to deal with the Metropolitan Police Force Complaints Project Act. We will be starting at 9:30 a.m. to accommodate the New Democratic Party critic. Keep that 9:30 a.m. time in mind.

Mr. Swart: Not this NDP critic.

Mr. Chairman: I did not say that, Mr. Swart.

We have with us this afternoon the first group of witnesses: the Right Reverend A. D. Brown and Bishop Wall. Reverend sirs, would you please come to the front?

Clerk of the Committee: I do not think the bishop is here.

Mr. Chairman: I am sorry. Just identify yourselves for the record.

ANGLICAN DIOCESE OF TORONTO
- AND
ROMAN CATHOLIC ARCHDIOCESE OF TORONTO

Right Rev. Brown: Mr. Chairman, my name is Arthur Brown. I am a suffragan bishop of the Anglican diocese of Toronto. Bishop Wall is not with us, but presenting the brief with me is Father Brad Massman, who is the director of the office of communications for the Roman Catholic archdiocese of Toronto and who appears on behalf of the Cardinal Archbishop. With me also is Canon Robert Cuyler, who is the director of community relations for the Anglican diocese of Toronto.

We have a brief we would like to read. It is not long, you will be glad to know. I hope it is supportive of your committee. I would like to read the first half of the brief, and Father Massman will read the last half; then we are open to whatever conversation you might like to have with us.

Mr. Chairman: I would like to remind everyone that we have a number of groups. We have tried to allow approximately 30 minutes for each.

Right Rev. Brown: You will have lots of time for us. We get our moment on Sunday.

We appear before you to affirm our strong support of Bill 82. The proposed measures are a very constructive step towards dealing with the new developments in media technology since the Theatres Act was first framed. The measures also do much to refine and render more effective the procedures of what will be called the Ontario Film Review Board in the light of a pornography industry that is becoming ever more complex and more destructive of human dignity.

More remains to be done, both at other levels of government and in the bringing of public awareness to bear on the effect of pornography on children and adults. Bill 82, however, is a very conscientious and responsible initiative at the provincial level. We give our support to the whole of the draft legislation.

Let me highlight certain features that are of particular significance. First, the expansion of the definitions of a "theatre," of a "film" and of "distribution" are exceedingly important. They amount to an updating of the legislation to accord with its original intent, given the vast proliferation of types of film and avenues of its viewing.

Great public concern has been engendered by the ready availability of restricted and even pornographic films that would be judged obscene under the Criminal Code to children and youth through video outlets. Pornographic films have been available to adults through these outlets in numbers that have been beyond the capacity of the police to monitor and, where appropriate, to bring charges. Parents have also been voicing concern about the uncontrolled availability of rock videos, many of which contain scenes of explicit and casual sex, hatred, violence and sexual violence.

Bringing these and other new forms of film technology under the jurisdiction of the film review board will provide effective monitoring and, where need be, control. Their record in the past is one of accurate reflection of community concerns; they will certainly bring that same perspective to their broadened mandate.

Second, essential to the effectiveness of the film review board is the principle of prior review of all films and advertising for films. There are those who argue for the exception of film designated as art. We do not view this as consistent either with the intent of the law or with social justice. Artistic taste is largely a matter of class and education.

If then that which appeals to the taste of one segment of the affluent élite were to be exempt, and that which does not appeal to the taste of that élite were to be subject to the law, we would be framing the law on the basis of class bias. This would be a contradiction of the democratic ideals of Canadian society.

Human dignity too is a matter of social justice, and sexual exploitation is an offence against human dignity. Sexual and other forms of abuse remain abuse, whether portrayed with class or without.

Salo: 120 Days of Sodom and The Tin Drum are just two of many instances of films by highly regarded members of the artistic community which none the less portray the use of children as sexual objects or women as abused and degraded. There is now abundant research evidence that the viewing of such exploitation affects the perceptions and ultimately the behaviour of its consumers, whatever the artistic quality of the film. This places children and women at risk of abuse in the larger society.

The use of children and youth as well as adult women in the production of such films will also of necessity have its effect on those actors and actresses themselves, some of them very young. This cannot be condoned by allowing such films to find a market in our province. That the admission of exploitive films under the rubric of art sets a precedent for other films which portray the same things is so clear that it needs no emphasis.

3:40 p.m.

Rev. Massman: The conclusion of our brief is as follows. The modes of implementation as set out in the draft legislation appear reasonable and effective. The use of four classification categories refines the notification to the public. Procedures for enforcement and, where desired, for appeal seem to be well structured to provide adequate enforcement and protection both for the film industry and for the viewing public.

We are also concerned about the broadcasting of violence and pornography, but as that comes under federal jurisdiction it must be addressed by legislative change at that level.

The medium of film in all its modes has enormous impact. In protecting itself against the small minority who use that impact irresponsibly, society makes clear that it places great value on the capacity of film for constructive expression and positive education. We are fortunate to live in a time when that potential is so great, and we look to the film industry to fulfil that potential.

The Roman Catholic archdiocese of Toronto and the Anglican diocese of Toronto are very much encouraged by the response of government in this matter. We are encouraged by the fact that all political parties and all levels of government have expressed their commitment to take effective steps towards dealing with the unprecedented influx of material into our society that is abusive of women and children. Bill 82 is a sound and concrete advance in that direction, and as such we give it our full support.

We thank you. We have copies for the record if you want.

Mr. Chairman: Thank you. I will now open the meeting to any members of the committee who would like to ask questions. If there are none, the parliamentary assistant would like to make a comment and ask a question.

Mr. Williams: Mr. Chairman, I think the appearance before the committee today of these senior representatives of the clergy from the two major religious denominations in our city is somewhat precedent-setting. It is encouraging to see the church participating in this extremely important social issue. I cannot think of a previous situation where the church has seen fit to involve itself in this fashion. It is encouraging to see the church coming forward and speaking out on these extremely important issues.

There is just one matter I would like to touch on, if I may. I think Father Massman clarified the point referred to by Bishop Brown earlier with regard specifically to rock videos. We are being inundated with that type of "entertainment" these days through television. I was going to point out that if you were referring to its usage in that medium, it is beyond our jurisdiction; it comes under federal jurisdiction. I gather it is being distributed as well by the video shops for home consumption.

As far as television presentation is concerned, as Father Massman pointed out, it would come under federal jurisdiction, the Canadian Radio-television and Telecommunications Commission specifically. In that regard, I wonder if the churches are taking the same type of initiative as you are taking here this afternoon.

Rev. Massman: We hope to do that.

Mr. Williams: This has been done or is in process?

Rev. Massman: We hope to. We have had in action for years a church parliamentary federal committee to which a number of churches belong. We work with the federal government in that area.

Mr. Chairman: Are there any further questions for the witnesses? If not, thank you very much for coming. Please leave us a copy. We will photostat it and distribute it.

Mr. Swart: I would like to ask a question. In a sense I hesitate to ask it because you may put the wrong interpretation on it. I am in agreement with the view that pornography has a harmful effect on many people. Not only does it degrade women but also, in hard-core pornography, those who see it; it has a damaging effect on them. You use that as an argument that it should be banned, that people should not be permitted to see it or use it, even in their own private residences. I realize that with the kind of society we have, very little can be private.

We also have within our society other ingredients, such as alcohol, that have a very serious and detrimental impact on many people. We have 600,000 alcoholics in Canada, 200,000 of them in Ontario. We permit the promotion of alcohol and do not attempt to prohibit it. It frequently causes alcoholism, wife abuse, death, disfigurement and the maiming of many people on the roads.

I want to pose a question to you, and not in the sense that I disagree with what you say. Are we going to prohibit pornography because it has a detrimental effect on many consumers, when we do

not apparently apply the same rules within our society to such things as alcohol?

I ask that in the very best sense. I hope you do not misunderstand me. I would like to have your answer to justify this prohibition as opposed to that of the other materials that drag people down in our society and have a very detrimental effect on them.

Right Rev. Brown: My first reaction is that we do put some restraints on alcohol. You are debating the age limitations at the present time. There is a constant debate in various parliamentary groups as to whether the age of majority should be 18 or 21. There is no age restriction on pornography.

Even the Liquor Control Board of Ontario--at least, the last time I was in--gave me a bag with the slogan "If you drink, don't drive." There are all kinds of prohibitions that we have in terms of inhibiting people or raising the consciousness level about alcohol. I think that is a fair comparison.

We do put lots of prohibitions on that. Our education, in Ontario--

Mr. Swart: Controls, not prohibition.

Right Rev. Brown: I will not argue with that. I would say that we do put some prohibitions on it. In this case, it is completely unrestricted. That is my first reaction to this.

Rev. Massman: There is another dimension too. I have talked with young people--and when I say young people, I mean people 12 to 19--as well as children, who have been used in pornographic movies.

It is very simple to make a pornographic movie with children. First of all, all you need is an apartment or a motel. Second, with videotapes, it is even easier, in the sense that you just need a camera and lighting.

So often, it is forgotten. We talk about the effect on the person viewing the material. What about the dehumanization of the people who are being used in these movies?

Mr. Swart: I accept that argument.

Rev. Massman: That is a very essential ingredient in this which I do not think applies to the liquor aspect of it, unless you are drinking it while you are making it or breathing in the fumes too much.

The point is that it does not affect the people who make it, but the people who appear are often bribed with the use of drugs or money or are blackmailed. There are kids on the street down here who are brought in, and young children who are used by people in pornography. There is a vast dimension there that is not in the question you have raised.

Mr. Swart: I accept that totally. It is just this other matter that I have some problem with theoretically.

3:50 p.m.

Rev. Canon Cuyler: There is a third element, and that is the element of dehumanization, especially for those who are pushed into making pornographic films. It is really degrading to the human being. It is degrading to women to have to watch it.

At least you know that when you are making alcohol, you are making alcohol, and that is reality. However, the reality portrayed in pornographic films is not the reality of what women wish to be in terms of what they really are; it is what pleases men, and there is a vast difference in that. It is how women's rights are offended and abused in that kind of production.

Mr. Swart: I accept that argument. Granted this is not the same degradation, but we have glorifying advertisements for alcohol and people are used to glorify its use; that really gives the wrong face to it.

Right Rev. Brown: It is hard to answer the problem of one social abuse with the problem of another social abuse.

Mr. Swart: The real issue is the right--I do not think it is a right, but some people would say it was a right--of people to do as they like and to see what they like, versus the right of the state to interfere with that.

Rev. Massman: (Inaudible) advertising to limit that type of enticement or pushing young people to believe that you have to have a beer or drink such-and-such liquor to be a great baseball player, hockey player or something like that.

Mr. Swart: Do not misunderstand me; I am in full support of the arguments you have made. This is a matter that concerns me.

Mr. Reed: As a member of the Association of Canadian Television and Radio Artists, I was pleased to hear a comment from you about performers in films. Very often the effect on the participant is never considered. Somehow, if you are not an actor, you tend to view it in the third person once removed. I am the father of participants in the acting profession, the husband of one and I am one myself, so I probably look on it more in the first person singular.

I have spoken out very strongly against the Theatres Act because I believe implicitly that the Theatres Act does not address the problem. When a film is submitted to a censor board, the real or perceived damage has already been done before submission. The role of a censor board in preventing that appears to me to be very much after the fact. You realize that much to which you refer is never submitted to a censor board. Most of the material we loosely call kiddie porn and so on never finds its way to a potential theatre or video store.

I have suggested the only way one can deal with this problem

is through the Criminal Code and by becoming specific about those elements in the Criminal Code. There has been some discussion internationally about establishing a common base of law among countries, just as we do with copyright laws, to try to come to terms with it. I wonder if you have given any thought to how the functioning of what is now going to be known as the Ontario Film Review Board will do anything constructive to deal with that obvious problem.

Right Rev. Brown: First, I am relating this to an act of violence rather than an act of pornography, the kind of thing that happened in Markham with the viewing of a film and a young fellow went out and killed a police officer, as depicted in the film. I think it is important to have a control board in effect for that. The kind of person who is susceptible and thinks that is the life pattern he should take is immediately vulnerable.

The other side of it is that we all develop, as we see the kind of stuff that is portrayed, a crassness and a hardness and an immunity--perhaps that is a better word--to the kind of stuff we see.

I hear what you say also. I would hate to lose this present act, because that is important to the kind of people I am talking about. I hear what you are saying and I would hope that would be addressed separately--to deal with the people who are totally exploited in the manufacture of that kind of filth.

Rev. Massman: We have to toughen the Criminal Code. I was in business and worked for a multinational corporation for 15 years before I became a priest. We would take this sort of thing into consideration if we knew there would be a problem with a product we had in a province or state, if we knew it would not be admitted because of some aspect of it. There was the example of one of the leading magazines a few years ago. The shipment had to be stopped at the border and they had to tear out six pages from that magazine from a shipment amounting to three truckloads.

If the producers know there are certain limits they can go to, the reasonable assumption is that they would not go ahead full scale in making the movie. They would say: "In Ontario, they have certain standards we cannot get away with breaking. We will have to go to a lot of expense, risk not having our film shown, having it cut, having it delayed. If this is what it is and this is what we have to live with, we have to conform to those standards." That is a very logical assumption in a business of any kind.

They will not go ahead and do anything they want to, then say it is too late to change it. I think the people acting in those films will be protected by that because the producers will understand they will be in trouble if they do not conform to those standards. But there are going to be exceptions and we certainly will have to toughen the Criminal Code for violations.

However, I think there is a logical element that if we have very clear standards--and this bill helps to set those standards--they will know they do not have carte blanche. It is going to be looked at. If they know there are standards and there is a chance

the film will be cut completely, I think there is a chance it will stop a lot of this; at least the more violent aspects of it.

Rev. Canon Cuyler: There is another element of it. We do have a Human Rights Code in the province. When someone's rights are violated--and this could be before the film is even made--they can be protected. They can go before a commission and state their case and then the government could take it on and prosecute if it finds there are grounds for proceeding.

We need to work at something along that line for people caught up in the industry. If their rights are being violated, either as a man or women or child, as to what they are being asked to do, they hesitate going into a court of law. There it can get into the media and become a very nasty thing. We should be working on something that can be done in private, where the prosecution is done under legislation already in place. But that is a long way off. I do not think we are going to see that. We do not seem to be moving in that direction, much as I wish we were.

Mr. Chairman: Thank you. Mr. Elston, you have a question and I think Mr. Breaugh has a question. Gentlemen, try to help. We will try to keep to our schedule as closely as possible.

Mr. Elston: I have only a short comment concerning the scope of the bill. I appreciate what you are saying about the actors or actresses or people used in a film, but I suggest this bill is not going to deal at all with films that are made outside our own territory. My understanding is that most of this material is produced in jurisdictions outside Canada, let alone outside Ontario.

My impression of that industry is that the type of material we are talking about may very well be made for markets other than Ontario. Ontario just happens to be an area that has potential, I presume, for these people to make them. I just do not want us to expect that this piece of legislation is going to go outside the boundaries of Ontario to reach those people who are being degraded in the production of the film, or whatever.

4 p.m.

Right Rev. Brown: I know. We do not have that expectation. There is a wide network working where we are now. We are in touch with the President's advisory committee, etc. One of the senior advisers, a member of the Society of Jesus, has given his own life to the study of this. He and Father Hill, of New York City, were in touch with that whole network.

They tell us how important this Canadian market is and how helpful it is for them for us to take action here. What we do has significance. I do not want to tell you your job, but I want to give you every bit of support I can to help you make the right decision. This is being watched across Canada and we find it is highly important to what is happening in the United States.

Mr. Breaugh: Do you anticipate that this bill and this technique will do anything to spread an awareness of the larger

problem? One of my concerns about this approach is that it almost legitimizes pornography. There now is going to be clean porn and dirty porn. In a sense, the government of Ontario is sanctioning certain kinds of pornography. Up to a point, it is clean and okay. That spreads and it seems to me it encourages the underground market.

It is at the point now where at my corner milk store there are magazines I never knew existed when I was a kid. If you went to buy those dirty books in those times, you had to go to faraway markets or the evils of a place such as Toronto. Those dirty books are now legitimate in everybody's book store.

I have a concern about that approach to the problem, and we are all in agreement there is a problem and something should be done about it. In a sense it legitimizes the process on the way through. If we were attempting to regulate the film makers and distributors, I would be much happier.

I get very upset when I see that our actions to control pornography consist of arresting some clerk in a milk store. It seems to me we are attacking the wrong end of the problem. I would like to get a response from you on that.

Rev. Massman: Having worked in that area with Project P, I would say that you should be very happy. I see the point you are making, but if it were not for some of the restrictions we have, you would see a lot worse on the bookshelf in your corner milk store. There is quite a difference between hard-core and soft-core pornography.

All you have to do is go down to Project P and have them pull out one of their warehouse drawers on any subject you want to think of, from paedophilia to bestiality to you name it. They will pull out the drawer and you can see all the magazines you want in those areas. I do not envy their job of having to look at that stuff. However, you do not see that kind of thing in your corner milk store. There are some standards that show what our community will accept.

A lot of people in my church, and I am sure in Bishop Brown's church and in other churches, would view the average soft-core porn magazine as totally unacceptable for many reasons, whether it is because it is pornographic, it degrades women or whatever. The point is that at least there are some standards they know they cannot touch and go beyond. This kind of act helps us with that in the community. There is some level of decency. As one judge said, "I went to pick up my car and I asked the garage man about a certain magazine pin-up, and the guy said, 'No, it is not acceptable to put that picture or calendar on the wall.'" There is a standard in society and I think this strives to protect some level of decency.

Mr. Breaugh: I cannot help but note that I never thought I would see the day when the Roman Catholic Church would say it is okay to sell Hustler in a milk store.

Rev. Massman: I am not saying that at all. In fact,

Hustler is a magazine I consider is in the area of going far beyond soft core to hard core in attitude.

Mr. Breaugh: Yet it is located in those very outlets.

The problem I am getting at is that society, perversely, is laying the grounds for acceptance of this. We are not saying that the making of pornographic materials is illegal. That is not what this bill is about. This bill says some kinds of pornography should not be shown and other kinds are okay.

In making those distinctions, we are working at cross purposes. I cannot remember a police action in Canada against anybody making pornographic material, film or otherwise. They keep arresting some kid in a milk store and that bothers me.

Right Rev. Brown: I hear you saying that it needs more intensive legislation than this. We talked about that this afternoon. We asked the Legislature to look at this and offered whatever assistance we can in our several disciplines.

The vital issue is one of freedom. I listen to people talking about the publication of pornographic literature or the use of pornographic films as freedom. That is crazy. That whole position was juxtaposed in 20 years. We are talking about saving freedom here; we are talking about freedom from exploitation. That whole business has been such a changeable scene.

If we are talking about what the value structure should be in the future of this country, and I think that is what we are really talking about, then the disciplines need to start to work together.

I am encouraged by what I have heard from the members of the committee this afternoon. What I have heard you say is that this legislation is not enough, and that is great. We would rejoice in looking at what our position ought to be with respect to what you have said to us, and hopefully you would, too. Let us keep working at it.

We can look at this as a partial stopgap. Is that a fair comment? That is what it is. There is nothing absolute here with respect to what you were saying. There are no absolutes. It is a kind of Band-Aid. Let us keep working at putting the tourniquet on that thing and getting that wound under control.

Mr. Chairman: Thank you. Mr. Williams, I will give you a quick comment and then we will move on.

Mr. Williams: I applaud the churches for coming out and speaking on this extremely important social issue, and supporting Bill 82.

Mr. Chairman: Father Massman, Canon Cuyler and Bishop Brown, thank you so much for being with us this afternoon.

VIDEO RETAILERS ASSOCIATION OF CANADA INC.

Mr. Chairman: The next group we have with us today is the Video Retailers Association of Canada Inc., Mr. J. Sintzel and Mr. L. Nicols. Gentlemen, please identify yourselves for the record.

Mr. Sintzel: Mr. Chairman, I am Jim Sintzel, and this is Mr. Larry Nicols, who is the secretary of our association as well as a video retailer and operator.

Mr. Chairman: Welcome, gentlemen.

Mr. Sintzel: I have some material; it is only one page. When we get down to the meat and potatoes of what we want to talk about, I think it may be easy to follow.

Mr. Chairman: We will get the clerk to pick up the one page, and we will get it Xeroxed, or if you have it Xeroxed we will have it distributed. Thank you.

Mr. Sintzel: We have enough to pass around to everyone.

Mr. Chairman: Please proceed, gentlemen.

Mr. Williams: Mr. Chairman, before they proceed, I have a point of clarification. Mr. Sintzel, are you appearing as a video distributor yourself?

Mr. Sintzel: No, I am appearing as the president of the Video Retailers Association.

Mr. Williams: Who is the distributor or retailer?

Mr. Sintzel: Mr. Larry Nicols, the secretary.

Mr. Elston: Mr. Chairman, we appear to have a visitor with us this afternoon.

Hon. Mr. Elgie: I hardly look upon myself as a visitor. I am a humble member of the House, serving the people along with you.

Mr. Chairman: Welcome, Minister. Thank you, Mr. Williams, for filling in.

Interjections.

Mr. Chairman: A little bit of order here. Minister, please. Gentlemen, would you please continue with your presentation?

Hon. Mr. Elgie: I wanted to be outrageous. I hear that outrageous things are being said, so I wanted to be outrageous, too.

Mr. Sintzel: First, I think the prime interest of the video retailers is to make money. They are in business for that

purpose. They certainly cannot make business where the industry is fraught with uncertainty. The uncertainty to which we would like to address ourselves today has not been created by the economy, certainly not by the economic factors extant in the province today.

We feel that where the government intervenes in an industry, it traditionally intervenes to stabilize or assist that industry, or to create some order out of chaos. We feel that the government, in entering into the video industry, has lent a certain amount of uncertainty to the retailers in particular.

We want to tell you how, and we also want to make some suggestions with regard to the legislation that we feel are reasonable can be addressed without turning the legislation upside down.

4:10 p.m.

About a year or more ago, we were at Mr. Elgie's office, and met with his people. We talked about the possibility of legislation affecting videos. At that time, we hoped we would have an opportunity for serious input from the industry side--that is, from the retailers' side--so that we could give you our ideas as to what we felt would benefit or hurt the retailers, as the case may be.

At that time, we indicated that we supported classification of videos. We still do. We still support informing the public of the content of videos and we feel the public should have an opportunity to choose what they want to view, but certainly not to have the government tell them. On the other hand, however, in view of the act we had to follow and the discussions that took place, we realize there is a certain reality in the community that must be recognized.

We certainly recognize there are many things on film which the community does not accept. The video retailers are not here to say that we want those unacceptable things put before the public. We agree. We are there to make money. We ask the government to give us guidance. As we said to the minister when we met with him more than a year ago, we want to know what is safe to sell.

The legislation that has been put together, in so far as Bill 82 is concerned, contains a number of provisions that give the retailers a certain amount of discomfort. I believe paragraph 1 of our concern was probably more than adequately dealt with yesterday by the impassioned plea from the civil rights proponents.

We are concerned about the aspect of the inspectors appointed under the Theatres Act being allowed to enter dwelling houses with warrants, and we urge you to have another look at subsection 4(3) of the amendment as well as subsections 4(5), 4(6) and 4(7), as we have set out. We would like you to clarify and be more particular about the invasions of the dwelling house or the home that seem to be envisaged in that particular section.

Something that is of more application to the video retailers is dealt with in paragraph 2. We would like an assurance from the

government that when you have classified a video and put your stamp of approval on it, and the video retailer puts that on his shelf to rent or sell to the public, he will not be prosecuted under the obscenity provisions of the Criminal Code.

You may say this is highly unlikely. Well, not so. Mr. Nicols is a prime example. We just finished a trial, which I think has had a great deal of publicity, involving a movie, Andy Warhol's *Frankenstein*.

I do not know whether you have seen it. We may all have our opinions of its artistic merit, yet on the other hand, this was a film that had been approved for public viewing and had been viewed publicly. I believe the last time it had great play in Toronto was the summer of 1982. On July 21, it was shown in an uncut version on Superchannel.

There were no charges brought against Superchannel or its proprietors. There were no charges brought against any of the theatres in 1982. However, Mr. Nicols was charged with the distribution of obscene material, forced to go to trial, and acquitted.

Within five days after the judgement was rendered on Mr. Nicols, a Videoflicks store on Avenue Road--one of the proprietors of that particular Videoflicks store, Beverley Kavanagh, is with us today--had a number of films taken away from it. These were films that had been approved by the Ontario Board of Censors and were suitable for viewing in a movie house.

The police have not laid charges, but this is the thing that we are uneasy about. We think that can be solved. We think it is fairly easy for the classification system to be made available to the Solicitor General (Mr. G. W. Taylor). One would hope that the Solicitor General could let all those titles percolate down through the system. Perhaps the police could be advised--not in the form of a squad such as Project P, but police generally. There could be a book of approved titles made available to police forces so that they would not harass the retailers in so far as this material is concerned.

I am careful to stay away from issues that may be more relevant to the Criminal Code. I suggest the discussion that took place with the prior delegation, important as it was, revolved around the issue of the Criminal Code. I want to stay away from that aspect, other than to say we are concerned about harassment--the entrapment section 159. We can talk about that another time.

Another item not on our list is that there are four classifications currently set out in the act. I believe they are family, adult accompaniment, parental guidance and restricted. We feel that there should be more and that there should be a further redefinement of categories so that when a customer comes into a video shop and sees a category, he will have a better appreciation of what is inside the box and that when he takes it home, he will have a better idea of whether it is appropriate.

It is one thing to go into a movie house and be offended, get up and walk out. It is something else to have the family gather around the television set and find that you got a bummer when you took the title out of the video shop and that it is really not in your heart to show it to your own family.

I would like to see, and I think the video retailers would like to see, a more precise system of classifying videos so that embarrassment will not take place.

We would also like to know more about the criteria used in establishing and measuring the categories. I had a great discussion with Mary Brown at this meeting, and she indicated they felt that by placing the criteria in the regulations there was a little more flexibility than if they were put in the act. I can understand that.

On the other hand, we feel a little uncomfortable not knowing what the criteria are at this time. We respectfully suggest that members of the public--I presume members of the Legislature would not want the information, but I might be foolish enough to want it. That information should be made available to us before these amendments are made law.

We have another concern with the advertising provisions. I spoke to Mary Brown about this and she was most helpful. I think most of the advertising that goes into a video shop is in the form of posters or is on the outside of the boxes and 99 per cent of it will no doubt be dealt with by the distributors who submit that material to the board.

However, there is nothing to indicate that a retailer who has a marquee and wishes to advertise his special on the weekend, or has a chalkboard in the window of his store and wants to advertise his special, will be free of the advertising requirements. If he did it without applying to the board for approval of the advertising, technically he would be committing an offence.

The problem for retailers is that it is not a hugely profitable business. If they had to take someone else on staff, even part-time, to handle the clearance of advertising it would place an additional burden that is unwarranted under the circumstances. I do not think there is any advertising a retailer could put together that would be offensive, particularly in view of the fact that most advertising has already been passed by the board.

We would also like an assurance from the government that this would not be retroactive in its application, particularly under clause 42(2)(c), which says in effect, "We do not like the cut of your jib, we do not think you are going to carry out this act and we will not give you a licence to do business."

I must make reference to the Criminal Code. Over the past two years, as you probably are fully aware, there have been many prosecutions under the obscenity provisions of the Criminal Code. In most cases, the charges were laid against a corporation

carrying on business--that would be a retailer--and against the officers.

4:20 p.m.

The technique that was adopted by the crown was, "If we get a corporate plea of guilty, we will withdraw the personal charges." We have five retailers with us today. One is a master of business administration and a chartered accountant, one is a former commercial photographer and one is a former teacher. Many of these people have other lives and reputations that they do not wish to have battered about by an obscenity charge under a law we now know badly needs renovation.

We hope you will carry on with this whole idea and go down and knock on Mr. Crosbie's door and tell him to clean up his act as well.

We would like an assurance that, because these companies tried to get out of a mess involving a piece of legislation that is tremendously uncertain--the current obscenity provisions under the Criminal Code--they will not be penalized when they come to apply for licences to do business.

We have completed our submission, and we hope some of these changes can be made to make it a little easier for people who are merely trying to do business. We agree with the classification system; we would like it broadened. We agree with the general thrust of the legislation and the amendments. We feel we have reasonable requests and would like to have a little comfort.

Hon. Mr. Elgie: Mr. Chairman, I would like to clarify what I trust is a misunderstanding of the act in the first comment regarding the provisions for inspectors appointed under the Theatres Act. That would refer to exhibits. As you know, if you read the original act, that refers to public exhibit for gain and so forth.

In this act we are not talking about what people have in their possession, nor about what they happen to be showing in their own homes. We are talking about exhibiting as defined in the old act or, in the alternative, when the new act is approved if they were acting as a distributor or retailer from a home.

If there is some misconception about that, let us clear it up now. I have been hearing things on the radio today that I find troublesome. The act does not allow people, under warrant, to enter homes with respect to what people have in their possession or what they are showing or looking at themselves. That is very clear.

Mr. Sintzel: With respect, clause 1(c) of the act, when defining "exhibit," says, "when used in respect of...moving pictures," means to show film for viewing for direct or indirect gain...."

As far as indirect gain is concerned, I am sure we can all imagine situations where indirect gain could be conceived as being

a business party or a Christmas party. A distributor could bring a film and show it to a number of his friends in his own home after dinner for the express purpose of saying, "Are you interested in distributing this sort of thing?"

There are a number of situations we could create that technically would be a breach of this act; perhaps the word "exhibit" needs clearer definition. Perhaps that is not the intent of the act, and I am sure it is not, but it is there.

The amendments have added a number of subsections under section 4 which did not appear before. Subsection 3 says, "Where, on reasonable and probable grounds, an inspector believes that a projector was operated or a film or advertising was exhibited, used or offered for distribution contrary to this act," he may then go out, obtain a warrant, obtain police assistance and can with the assistance of that warrant enter a dwelling house. We are concerned.

Hon. Mr. Elgie: There was no warrant requirement before.

Mr. Sintzel: It still allows them to enter a dwelling house.

Hon. Mr. Elgie: Only for the purposes of the film being exhibited and for gain. I have heard your discussion of this, and our solicitors would not agree with you, but we accept your point and we will confirm again that you are wrong. That is what I have been told by my counsel: Lawyers tend to fight with each other about the meaning of words, but let us not fight about the intention of what has been there for many years with respect to films. That has not arisen over the years, as you know.

Mr. Sintzel: It is to be hoped that where there is an area of discomfort--I think it was expressed yesterday here, and it certainly has been expressed in a number of areas, that there is a possibility of an inspector perhaps using these new sections to enter a dwelling house--some change, which could take place in the definition of "exhibit," would afford comfort to people that this is not the intent of the act or not the accidental aspect of the act.

As far as giving comfort to the public is concerned, that is not a bad thing. Let us not hammer it out in the courts; let us do it here now or in the Legislature.

Hon. Mr. Elgie: As I have said, counsel advise me that what you suggest here is not how the act is or would be interpreted, but we will take your comments and give them attention.

Mr. Sintzel: Thank you very much.

Mr. Elston: I have a question and a comment. Yesterday we also heard from people who had expressed an interest in expanding the classification categories. Can you tell us something about your thoughts on the classifications you would like to see?

Mr. Sintzel: Quite frankly, I have not prepared any material on the nature of the classifications, and I think I would perhaps leave that to those who are much more experienced in the area of classification, other than to express the intent that we feel they could be a little more specific or explicit to allow people to know exactly what they are picking up when they go into a video shop in order to avoid that embarrassment in the living room.

Mr. Crosbie: I want to draw attention to the fact that the theatres branch of the board now, in addition to the classification of a film, frequently attaches language to it such as, "This is a restricted film because of violence, because of sex," or "It is 'parental guidance' because of language." So there currently is a system in place that substantially enlarges or subdivides, if you will, the categories by additional comment.

Mr. Sintzel: That additional comment might provide a great deal more flexibility than having a set category that you have to put everything into, because under those set categories, even if you try the four categories you have now, you cannot always pigeon-hole them.

Mr. Crosbie: With respect, if you took the four categories and divided them into 20, you would create more arguments: "This should be a 19, not a 17," or "That should be a four, not a three." But if we are talking about a group of films that are "parental guidance," or fitting the ones that are more restricted into "parental guidance needed," then the reason you want parental guidance is indicated.

There are some films that certain groups in the community find offensive that others do not. If you indicate that the type of film may be disrespectful of religion, for example, some people may not find that offensive at all; others may find it very offensive, and you can indicate that. But if you try to create a category of films potentially disrespectful of religion as category 22, you could go on endlessly categorizing them. I think it is better to keep the major categories and then have those comments.

Another thing that is going to be available to the industry is the classifications that the board has put out. I do not know whether you have seen the categories, but the information is all available to the industry, and if the industry is really interested in having adequate information available on all films, it can have it in spades. -

I would suggest an analogy. We do not tell people what other products on the shelves are good or bad for them. They might be licensed under some control legislation, but we do not take on the responsibility of breaking down and doing the advertising on behalf of the distributor.

4:30 p.m.

Mr. Sintzel: There are two things, if I may respond. I think what you are saying in the first instance about the comments

that would be attached to this material provides a great deal more flexibility and I think is much more realistic in the sense that two similar films could provoke different comments because of aspects that concern different people.

The film or the information is available from the theatres branch, so I think doing it the other way places a heavy burden on the retailer. The distributor has to go to the board in the first place to get approval, so maybe that is the person who should be responsible for adding his own comments or providing the information from the theatres branch and passing that on to the retailer.

Mr. Crosbie: That is an excellent idea, if distributors would undertake it. They could be provided with the information and very easily pass it on with the films.

Mr. Sintzel: We just saw a flyer attached to a video today, and I think it could be seized as being something akin to Penthouse. It is pretty explicit. I would think that is the kind of thing you would want to put a handle on.

Mr. Chairman: Thank you, gentlemen; I would like to get back to Mr. Elston's question.

Mr. Elston: There are a couple of things on which I would request information from the minister as a result of the list of suggestions made by Mr. Sintzel.

Is there an undertaking that, once a video has been approved by the film board, it will pass the obscenity laws, as suggested in paragraph 2?

Mr. Crosbie: That is beyond our control.

Mr. Elston: Is there a chance the Ontario Film Review Board could approve what would be believed obscene in the federal jurisdiction?

Mr. Crosbie: There is no question that is a problem. We do not control the police forces across the province. You may recall that one of the films that Judge Borins found was acceptable was subsequently found obscene by a jury in Thunder Bay. Maybe community standards there are different; at least as perceived by that jury they were.

Mr. Sintzel: That very same title was found to be not obscene by the same judge in another case, so we had a flip-flop between those two trials in Toronto. As a matter of fact, a judge in Kingston, two weeks after the Thunder Bay trial, found the same title not obscene, so you can see the problems in Ontario.

Mr. Elston: What might be good for Mr. Nicols' business here in Toronto may not be good for a subsidiary in Thunder Bay.

Mr. Crosbie: That is true.

Mr. Sintzel: If I may just speak briefly about an

experience: for six years I sat on an advisory committee in Ontario. Some of you may be familiar with it; it was created by the Periodical Distributors of Canada. With a psychologist, Tobi Levinson, and Arnold Edinborough, who is a lion of the arts, we tried to keep magazine distributors from offending community standards. Given the current situation with Penthouse, I am sure you have heard a bit more about that committee.

We tried to work out a *modus vivendi* through the Ministry of the Attorney General. We realized he cannot instruct the police, but he could advise crown attorneys to look twice at material that had been approved by the Ontario advisory committee for distribution before they laid charges. It did not work out that way in all instances, but it did in most.

Certainly, if the list of approved films is distributed or made available to police forces so they can examine it, they may think twice about laying a charge.

We understand there is the Criminal Code and also this legislation but, on the other hand, there is a *modus vivendi* that can be worked out.

Mr. Chairman: Excuse me, Mr. Sintzel. I would like to continue with Mr. Elston. I have a quick question from Mr. MacQuarrie and then I will have to cut it off, because we are nearing the completion of our time.

Mr. MacQuarrie: There are two jurisdictions with competence in these matters and it strikes me that if we could get some sort of uniform application it certainly would be desirable.

Hon. Mr. Elgie: I think there should be more discussions with the Attorney General because it would be a little odd to have something cleared by the censor board and then have someone charged. I have no problem with that, but I cannot give you those assurances and I think everyone knows that. However, I think it certainly warrants a discussion with the Attorney General.

Mr. Elston: I have one last question, and it concerns who is going to be entitled to be licensed and who may not be licensed under your regulations.

I presume it is going to be covered in the regulations, but I can well see that someone who may be operating now might be deemed unsuitable for licensing if the regulations are set up in such a manner. We have not seen them, as you know, but I understand that we will next week.

I presume that almost anyone who is in the business now will be able to get a licence. Is that the way you are approaching it?

Mr. Crosbie: The test applied in the act is that "the applicant is a corporation and the past conduct of an officer, director or shareholder affords reasonable grounds for belief that the applicant will not comply with this act and the regulations in operating the theatre."

I would think that if a distributor has been found guilty of an offence because he distributed a film whose contents he did not realize--we heard the story yesterday of distributors who get them in sealed packages and do not really know what the contents are--I do not think a conviction of that kind would be evidence that the person would not comply with this act. He would no longer be dealing with that type of product; he would be dealing with a marked product. I think you would have to have some evidence of a wilfulness to sell obscenity.

Mr. Elston: Is further material available in the regulations concerning the tests for licensing?

Mr. Crosbie: I do not think so.

Mr. Elston: So the only test, then, is now in the legislation itself. You would then have to see what a person's past track record was, though, when he comes to make an application. It might very well be that someone who has several thousands of dollars of materials may be prevented from operating in Ontario by the imposition of this legislation.

Mr. Crosbie: Properly so.

Mr. Elston: I guess the question becomes, how do you know they are properly being prevented until they have had a chance to operate or perform under the provisions of the act? That is my question.

Mr. Crosbie: We have to make this judgement call under any number of statutes. We are required by the laws that have been passed by this Legislature to pass judgement on whether or not a person is fit to carry out the duties of a used car salesman. He has never sold cars in his life. How do we know that just because he has a fraud conviction he is going to cheat in the sale of cars? That is the kind of judgement call we make.

Mr. Elston: Presumably you may provide him with some kind of licence and then let him work his way through the program. In this case we are putting in a brand-new piece of legislation with a brand-new licence covering any number of people who are already in the business who have a substantial interest and who already have some involvement there. In your example the fellow has not gone into business yet and does not have the investment. All I want is to be assured that there is time available for people to develop a track record.

Mr. Chairman: Excuse me, Mr. Elston. Can this not be debated next week in the House?

I would like Mr. Allen to have one question. I would like to move on, Mr. Reed, really, because we have three more groups and we would like to get to them. I am sure you will have an opportunity--

Mr. Reed: You are going to make an arbitrary decision with a basic ambiguity.

Mr. Chairman: Mr. Reed, you will have ample opportunity to debate this in the House. You know what the problem is and I am sure you will have your opportunity.

Mr. Allen: Gentlemen, excuse me for being late. I was taping something while you were presenting.

We have had two kinds of presentations to date. One has been from people who are consumers and viewers, people who are in either the world of law or of journalism, that kind of thing, and who are very concerned about the freedom of expression issue. There have been others who have been here speaking from a business point of view, like the gentleman who was sitting in that seat yesterday, and yourselves, who, I gather, are coming at the question rather more from a business point of view.

On the one hand, one obviously wants a great deal of clarity from the business point of view, because you want to get a film processed, if you like, a judgement made and some security.

Mr. Sintzel: We only sell or rent, you see. We are from that perspective, not from the perspective of the distributors or producers.

4:40 p.m.

Mr. Allen: I am assuming, since I only heard part of your presentation, that your concern is principally with the latter. Or is it principally with the former?

Mr. Sintzel: As retailers, we are concerned with the product going directly to the public, either by rent or sale.

Mr. Allen: And with clarity of circumstance surrounding that, so you are not prejudiced by having retailed something that will presumably reflect on you, either legally or otherwise?

Mr. Sintzel: That is right, yes. Did you get a copy of our--

Mr. Allen: I have this series of proposals, some of which I think are quite interesting. Others are probably impossible to accommodate.

I would like to know if you are concerned, from either point of view, about the lack of appeal embodied in the present law--that is, that the Ontario Film Review Board will establish a panel which will review films and videos, and if that judgement is contested in one way or another, not deemed adequate, there is another panel of the same order created, and the matter ends after that judgement is made.

I can see that this would create clarity and finality of a kind, although it obviously will not necessarily relieve you or other distributors and retailers of material from prosecution under the Criminal Code. That is a separate matter.

Would you find it advisable, from your business point of

view, to have a further step of appeal--in other words, to the courts? The film review board would then not preclude the showing, but advise you clearly as to what it thinks about the film, and then leave you to distribute or retail it, or not, as the case may be.

Mr. Sintzel: I think a further appeal is always acceptable, and certainly from a lawyer's standpoint it makes work. From a retailer's standpoint, however, we get the product which has already been passed, edited, approved or disapproved--and in that case, we would not get it, of course. Our prime concern is: can we safely merchandise this product?

As to whether it should be reviewed again, or whether the cuts suggested were fit and proper, that is perhaps something we are academically interested in, something we are curious about as people involved in the business. From a purely practical dollars and cents standpoint, however, we want to know whether the product we get is safe to merchandise.

Mr. Chairman: With that, Mr. Sintzel, I think we will have to conclude. I think the point has been amply made by you. We thank you both for appearing, and we would now like to move on to the next group.

Mr. Sintzel: I thank you, Mr. Chairman. I certainly thank the minister. I appreciate it.

PROJECT P

Mr. Chairman: The next group will be the Ontario porno squad. Corporal Ron Kirkpatrick, please. Corporal Kirkpatrick, welcome to the committee. Please identify yourself for the record.

Corporal Kirkpatrick: This is Corporal Ronald Kirkpatrick. I am the officer in charge of Project P, the anti-obscenity squad for Ontario.

Mr. Chairman: Do you have a written or oral presentation, or are you just here for questions?

Corporal Kirkpatrick: A free-for-all presentation. I have not been here for any of the other speakers. I wanted to let the board know the police perspective--more or less, what we have seen and run into. Perhaps it will help everyone in the long run.

To begin with, I guess I should say that in order for us to prosecute anything for obscenity, it is going to have to be prosecuted because it is an exploitation of sex beyond community standards, or else sex combined with crime, horror, cruelty or violence.

Just for clarification, we measure community standards by watching what is happening in the courts, in consultation with crown attorneys. Certainly, if something is being acquitted in the courts, then the courts have obviously told us that the community is ready to tolerate this type of matter. If it is convicted, we continue to go after that type of thing.

The present problem in the videocassette industry generally, of which I imagine you are well aware, is they are not classified as to content. A certain percentage of the tapes would have an American classification stamped on them. It may have an R for restricted. However, what is happening in the video business is that major chains have their own labels, so they put their label with their logo on it over top of the original label and you are back to no classification at all, be it American or Canadian. So you have no idea what you are taking home.

Pirating is a very big problem in this business. People visit the legitimate video retailer, take out a membership, rent half a dozen tapes at a time and bring them back in three hours. They take them for one reason, which is to start their own competitive business. We have run into a lot of cases where stores have a certain percentage, if not all of their product, in pirated materials. Certainly a classification number or something would straighten that problem out.

The tapes purchased by the retailer are usually purchased on a cash-and-carry basis from a salesman who comes to their store. The fellow comes in with a number of tapes. The retailer has no time to prescreen the tapes. Most tapes average an hour and a half in length. So they are buying really on the little bit of advertising that comes with them, and what can be told to them by the salesman.

There are no refunds given for dissatisfaction with the content, because once the salesman leaves the store there is a possibility the retailer could make a copy. Therefore they will not give the money back. Literally, they are stuck with it. They have paid \$100 for it and they are now stuck with it. It sits on the shelf.

Some of the salesmen, we find, are giving oral and written guarantees as to the legality of the tapes. They state such things as they have been approved by Customs and Excise, the Montreal police, the RCMP and the Ontario censor board. Whereas, if the truth be known, it may have been approved by Customs and Excise under the Customs Tariff Act and that is all. We have even seen the written guarantees, which do not help the man on a criminal charge, certainly not in a civil action later.

We have video stores purchasing hard-core tapes from British Columbia--the California hard type version--and they are running them in Ontario. If that is the way they are going to operate, it will continue. However, it would certainly drive it underneath the counter away from the children, if nothing else. We can still get it underneath the counter. We can get at it.

At present, there is no law to control what age group can purchase or rent a tape. We have to rely on the common sense of the rental store. There are a lot of abuses in every community. We are hearing it. We are getting complaints continually.

Videotapes are unedited. Therefore, a tape could be longer than a movie of the same title someone saw uptown. It causes unsolicited exposure to the general public, be it to extreme

violence or sex and violence or explicit sex. Again, we get that type of complaint.

Under subsection 159(6) of the Criminal Code, the onus is on the owner of the store to know his product. Many of the tapes we have prosecuted have been approved by Revenue Canada under the Customs Tariff Act, but that is not a guarantee the material is not obscene. It is only a guarantee they will not be prosecuted by Revenue Canada-Customs and Excise under the Customs Act.

The same would stand with videotapes which are classified, but only classified and not edited. If a tape is classified by the theatres branch to be anything, but it is never edited--perhaps it is classified as triple-X. Under the present law, the onus would still be on the owner of the store. So we would still come in and prosecute him, even though it was classified.

We think if the classification system was the only system, what is to stop British Columbia distributors from having copyright--which we see already--to some of the California hard-core pornography and bringing a product to Ontario and having it classified to distribute to the stores? Once it is in 2,500 stores it is awfully hard for a small group of people to try to enforce the law against it.

4:50 p.m.

We have a list of suspect tapes we have prosecuted in the last year and a half. We are asked continually by the video stores to provide them with a list. We would like to be able to provide them with a list, but because it is so easy to have a legal version versus, say, a hard-core version, we dare not put out the list we have because we could be sued. Someone could be putting out a very proper version. If they were numbered tapes, we would be able to say, "Tapes with this number are or are not obscene, or are going to be prosecuted."

We liaise frequently with theatres branch of the Ministry of Consumer and Commercial Relations. We are called upon quite often to show board members excerpts of what is being prosecuted and convicted in the courts.

My staff and I have seen the out-takes from the theatres branch. I have seen edited scenes of sex, and sex with violence. I would have to concur with what they are doing. I would certainly lay charges on what I have seen in their out-takes, and any member of my staff would step forward to do so immediately.

As Mr. Sintzel mentioned, there was recently a trial in Thunder Bay. I attended that trial, and gave testimony. Mrs. Mary Brown, director of the theatres branch, was also there as an expert witness. She gave testimony on the community standards of Ontario. They were accepted by the court.

I sat and listened to them, and I can only say that as someone who investigates this type of thing, I thought she was right in where we believe the community standard to be. She seemed to be right in with it. She was not out to the left or to the

right.

In April of this year, another officer of Project P and I gave a two-day course in Fredericton, New Brunswick. It was attended by the Chief Justice of that province, 14 crown prosecutors and 35 police investigators from New Brunswick, Nova Scotia and Prince Edward Island.

From all indications at that conference, the standards in their communities were very similar to ours. They said what we were teaching was exactly what they were prosecuting, exactly where they stood--until we came to sex and violence, and we found they were more conservative.

They would go after the implication of a violent act along with sex, whereas we do not do it here. For example, a film called Chained Heat has been passed by the censor board of this province. Charges were laid against it in PEI, and it was ordered out of the theatres in Nova Scotia.

In closing, I would like to say that obscenity, pornography, cannot be controlled by police, Canada customs, and the courts alone. There are not enough of us. The proliferation is too great.

I think it can be controlled through effective groups like the theatres branch, but not simply by classification. Once that tape leaves a store, it may be viewed by anyone, regardless of his or her age or whether he or she is under the influence of intoxicants or drugs, or what have you. That really is what I came to say.

Mr. Chairman: Thank you, Corporal Kirkpatrick. Mr. MacQuarrie, I believe you had a question.

Mr. MacQuarrie: Corporal Kirkpatrick, you indicate that there certainly are problems in keeping track of tapes, whether they are classified or not. How would you go about strengthening the proposals here, as far as classification goes, from the point of view of enforcement?

Corporal Kirkpatrick: I have not read the amendments in Bill 82 entirely, but I think there would have to be some teeth there, something to the extent--as I said, anyone can rent a tape right now to anyone who has \$4 in his hand, regardless of his age.

I think, if it is a restricted tape, then you should be 18 to rent, and if it is rented to someone obviously under 18, then you should be held liable. If it requires parental guidance--no, I am sorry; if it can be viewed by anyone over 14, so be it.

If that is the age limit we have in the theatres, let us use the same age limit, but let us make someone responsible. If a 10-year-old child is renting a restricted movie, then someone should be held accountable, and I think it should be the video store.

Mr. MacQuarrie: Okay. Now, I go into a video rental shop and I rent a tape that has a provincial classification marked on

it. You indicated in your earlier remarks that the classification might be an unedited version of the tape. How can I make sure that the tape I rent is the one that has been through the censor board?

Corporal Kirkpatrick: The only way it could be done is to have a sticker assigned to each individual tape. Let us take a movie like On Golden Pond. If there are 30,000 copies of that film out there, then there should be numbers 1 to 30,000. I do not mean the same number on each one, because anyone could copy the number. It should be assigned and there should be a record. We should be able to go in, look at the number, make a quick phone call, press a button on a computer and say, "Yes, that belongs on that tape." I think it would end the problem.

There are a lot of very honest, legitimate video retailers who are being charged because they are carrying a product that is beyond community standards. They tell me they have no time to watch it, and perhaps they do not. But by law they have to; the onus is on them.

Mr. Allen: Mr. Kirkpatrick, you people are getting better and better known all the time, given your exploits, your success in prosecutions and so on. It is obvious that you are one of the dikes that holds back a flood of material that all of us are very concerned about.

At the same time I have found it very difficult personally to secure a sense of what proportion of the film or video material that is in retailers at the moment would be considered by your sense of community standards to be objectionable. What is the numerical scale, in your sense, of the problem we are dealing with?

Corporal Kirkpatrick: It varies from store to store and from location to location. I happen to belong to a video club. The store I go to does not carry adult material. It has some horror movies I would not have in my house because of the violence, but there happens to be a lack of sex in that type of film. If we are talking of the obscene variety, I do not think it is a lot; it is certainly less than 10 per cent of what is there.

It is very hard to put a finger on it. If you talk to someone in the industry who has not been charged, he will tell you that adult pornography, for example, is maybe five per cent of his business. But if you talk to someone who has been charged, he will say: "Come on, everybody wants it. That is 40 per cent of my business." So it depends on which side of the coin you are on. It is very hard to put a finger on it.

Mr. Allen: Do you yourself, from your experience in this field, see a way to control whatever that percentage is--five per cent, 10 per cent--without casting a net over the whole world of video and film exhibition and viewing in Ontario?

Corporal Kirkpatrick: No, sir, I do not, because I do not know how else to do it. I know there are not enough policemen or customs officers. The courts do not have enough time to do it; we have certainly backlogged the courts. We do not have enough manpower to do it that way.

It also does not protect the retailer against the pirating, and there is a lot of it; it is hurting them. People are opening up across the street from them with their product. I am not even talking about the fact that they have defrauded Twentieth Century and Warner Brothers. They have hurt the guy right across the street from them, and I think it is the only way it can be controlled.

Mr. Allen: As you have said, there is no guarantee with a title that you are dealing with the same film.

Corporal Kirkpatrick: Under present standards, no.

5 p.m.

Mr. Allen: I do not know how many titles there are out there. I understand there are 20,000 in the public library system alone, so we are talking about an immense number of titles. What kind of establishment would one have to have at the theatres branch? If you cannot get enough manpower from the police and if there is not going to be enough manpower to man the courts, what kind of an establishment are we talking about in the theatres branch to control the whole phenomenon, if we cannot isolate the five or 10 per cent in some way?

Corporal Kirkpatrick: What makes it so hard for the police, first, is the fact that it is in every community. I do not know how many video stores there are. Everyone who sells TVs is also renting tapes. I will probably be conservative and say that there are 2,500 outlets in Ontario.

If the product comes through the censor board, from what I understand, they can do it with another 15 or 20 people. That is the information from them. I am saying what I have been told by them. Certainly, the product would have to go to them before it went on the shelf. Once it is on the shelf, we are chasing it to Rubber Boot, Ontario from downtown Toronto.

There is Canada customs. We have 270 border crossings in Canada. Anybody who has driven from the United States to Canada knows that maybe one in 10 cars will be sent over for checking. That means nine out of 10 cars drive on through. All you need to do is throw one tape under your seat and make all the copies you want here. It is that simple.

Mr. Allen: From what I have read about the Borins decisions, I gather that retailers have used them as guidelines, and have been reasonably self-policing as a consequence of those judgements. Have you found that many of the retailers do use court decisions to guide them on community standards, to exercise a self-policing function, to restrain and hedge in their own activity?

Corporal Kirkpatrick: I have found that some do; I would not dare say 50 per cent. A lot of them have invested \$100 a tape, and have more or less adopted an attitude of "Come and get it." If you do not come, it is still there. We are still finding some of

the tapes that were convicted on shelves.

The distributor of the tapes sent a letter to his customers, advising them which tapes were convicted and suggested that they get them off the shelves. Again, we are finding that the letter is in the store, and the product is still there.

We are probably finding things even worse than what Judge Borins had to see at the trial, and they are on the shelf. In Toronto, we are making seizures of hard-core material on the shelf all the time: bondage, sadomasochism, and certainly just hard-core sex with rape in it.

Mr. Allen: Okay, thank you.

Mr. Chairman: Thank you. We have two more questioners, and I just want to remind the committee that we have two more groups. I know all the questions are very interesting, but, Mr. Reed, please proceed.

Mr. Reed: Corporal, I want to go on record to you that I have been an outspoken opponent of this bill. I feel that censoring in Ontario is really fraudulent, because it simply creates an illusion that something can be accomplished in coming to terms with those perceived transgressions that are of concern to all of us. I think the comments you have made tend to reinforce my case.

You have said that the obscenity charges you lay deal with sex, or sex associated with whatever. To some of us, obscenity is nonsexual. To some citizens, obscenity goes well beyond the realm of sex. Do you mean to tell us that the only way you can prosecute under the Criminal Code as it exists, is if somebody stands in the witness box and says, "Yes, your Honour, that disembowelling scene really turned me on"?

Corporal Kirkpatrick: You have to be able to have the ingredient of sex, sadly. I must say that I think it is a sad state of affairs that we have extreme violence very graphically displayed on film, and that it cannot be charged or even encroached upon unless the ingredient of sex is there, because the law is written as such. Again, I have to work within the law.

Mr. Reed: You have also commented that it will drive things underground. Once this bill becomes law, certain things you would like to be able to prosecute may no longer be available for prosecution.

Corporal Kirkpatrick: I can still get to it. All I am saying is some people will continue to carry that product. Hopefully, most will not, but those who do still have to rent it. They will rent it to me and people from my squad. At least it is not being rented to a 12-year-old boy or a 10-year-old kid or whatever.

Mr. Reed: I have one last brief question. A comment was made in my local newspaper in Rubber Boot, Ontario, where I come from, by the committee against violent pornography, as they call

themselves, that the vast majority of "kiddie porn"--for which I think we all share a common abhorrence, regardless of whether we are for or against censorship, or represent one particular body or another--would never be submitted to a censor board anyway.

I would therefore ask you what function this censor board, that will be called the Film Review Board, really performs. It does not come to terms with obscenity. It does not stop production. It does not touch those very abhorrent areas that are, for our purposes, nonsexual in nature. What does it do except pull the blinds down around a jurisdiction?

Corporal Kirkpatrick: First, we say in our office that kiddie porn is probably less than three per cent of what we do. It is strictly an underground thing: paedophile to paedophile. It is not something we will find at the corner store. I have only found it in video in the homemade variety in which somebody seduced a child and did his own filming. It would never be submitted to the censor board because it is never going to appear at the local video store. As you say, most people are so strongly against it they would probably harm an individual who put it on the shelf.

However, a lot of other forms of pornography, such as the very violent, are in the stores. You asked me a personal opinion; I personally think it needs some control. These things are being practised. There are copy-cat crimes. We all know it. We read it every day in the papers. I can understand your view, sir, but I feel we need control.

Mr. Chairman: Excuse me, Mr. Reed, you did say "the last question."

Mr. Reed: Thank you, Mr. Chairman. I rest my case.

Mr. Chairman: I wanted to give Mr. Elston a quick chance for a question.

Mr. Elston: I have a question to the minister that was raised when Mr. MacQuarrie was speaking about the classifications of these films. The section of the act indicates that films may be classified. Is there situation foreseen in Ontario under this piece of legislation in which a film would be distributed without classification? It does not say they all must be either classified or rejected for distribution. Then we get into the difficulty of dealing with the classification question Mr. MacQuarrie raised, and also what the corporal suggested when he said the designation would provide certain side benefits such as the elimination of pirating, for instance. Could we have some clarification?

Hon. Mr. Elgie: Are there some that would not be classified?

Mr. Crosbie: It is my understanding the intention of that section is not to create a category of unclassified films that could be distributed. I do not know what the draftsmen meant by the use of "may," whether they were considering the fact that all films are not classified. Some are, in fact, prohibited.

Mr. Elston: It probably should be more specifically set out that films will either fall under one of the following classifications or be banned from distribution. Is that a fair reading of this?

Mr. Crosbie: I would think so, yes. That is the intent.

Mr. Chairman: Thank you, Mr. Elston. Thank you, Corporal Kirkpatrick for being with us. We have enjoyed having you.

Corporal Kirkpatrick: Thank you very much.

5:10 p.m.

Mr. Chairman: We will move now to the Canadian Filmmakers' Distribution Centre, represented by Ms. Susan Renouf. While she is coming up to the table, I would just like to remind members we will adjourning at 5:40 today because there is a vote in the House. When the bells ring we will have to adjourn. We have Professor Wilson after this particular group. We are doing worker's compensation. We will be having a vote on worker's compensation at 5:45.

Good afternoon. Thank you for coming. Please identify yourselves for the record. You may begin your presentation.

CANADIAN FILMMAKERS' DISTRIBUTION CENTRE

Ms. Renouf: My name is Susan Renouf. I am the administrator of the Canadian Filmmakers' Distribution Centre. This is Kay Armatage, the chairman of our board.

The Canadian Filmmakers' Distribution Centre is a nonprofit corporation dedicated to the promotion and distribution of independent film in Canada. Founded in 1967 by a group of Canadian filmmakers, the centre is still run by the filmmakers. The centre receives funding support from all three levels of government: federal, provincial and municipal. Its film collection consists of almost 1,000 films by 450 filmmakers, ranging in genre from experimental through animation to documentary and student work. The holdings of the centre constitute the largest single circulating collection of independently produced film in Canada.

Because of the nature of these films--they are rarely feature-length fiction and are noncommercial in content and form and are primarily 16 millimetre--the centre's market is not the 35-millimetre mainstream exhibition cinema. Its market is largely educational institutions, libraries, art galleries, film societies and other noncommercial venues. Its contract with the filmmakers is nonexclusive and is geared towards returning the majority of its distribution revenue back to the filmmakers so they can live and continue their work in the field of independent film.

As a group, we were dismayed and shocked to examine the proposed amendments to the Theatres Act, Bill 82, currently tabled before you. We feel the proposed amendments give even more sweeping powers to the Ontario Board of Censors than now exist and feel that this broadening of the board's powers is unacceptable,

given the current rulings of Ontario courts that state the censor board is acting in violation of the Charter of Rights and Freedoms under the new Canadian Constitution and that the board has no legal standards upon which they base their rulings.

Specifically, we object to the proposed inclusion of distribution activities in this act. The inclusion of distribution allows the board of censors power to classify, cut or ban a film or video once it has been accepted for distribution by a film exchange, whether or not this film or video will ever be exhibited in a standard theatre. It therefore restricts the right of the individual or group to have access to films that the board of censors has, without set standards, decided cannot be seen uncut or at all in Ontario.

There is no protection or guarantee in the act these films or videos will not be denied distribution on social, political or even aesthetic grounds. There is not even a guarantee that the film or video denied distribution on moral grounds has been judged by standards deemed acceptable by the community at large.

It is a further insult that the definition of distribution in the proposed amendments covers not only films intended for commercial distribution but all those "distributed for direct or indirect gain." Indirect gain is not defined and could be construed to include social or political gain or gain in artistic stature as well as monetary gain.

We also question whether anyone really comprehends the level of bureaucracy which will be required to administer the act if distribution is included. The Canadian Filmmakers' Distribution Centre alone carries 1,000 films, the majority of which are noncontroversial films of an educational nature. Each one of these films will have to be viewed and classified by the board. Multiply our films by the collections of the DEC, the Development Education Centre, International Tele-Film Enterprises and Marlin Motion Picture Ltd., to name only a few who carry noncommercial and largely educational films, and you have 3,000 to 4,000 films which would take a panel probably close to a year to view.

For the Canadian Filmmakers' Distribution Centre in particular, which is funded by the Ontario government and operating with a minimal and desperately overworked staff, the amount of time spent complying with this act will probably eradicate most of our ability to do the work we are funded for: the promotion of Canadian film.

We are particularly disturbed that no standards are set in the act or the proposed amendments defining the criteria by which the board may make rulings. Instead the act gives the board power to censor "in accordance with the criteria prescribed by the regulations." These regulations are drafted by the Ontario Board of Censors and approved by cabinet with no public input or discussion in the Legislature. We have been given no indication of the content of the regulations that will accompany the revised Theatres Act.

Since no standards are defined by the legislation, there is

no protection against the restriction of a film or video's circulation or exhibition for political, social or aesthetic reasons. We object to the censor board being granted the power to define the moral and ethical standards of the community. We request that the guidelines on which the regulations can be based be a matter of public debate in the Legislature with input from the community and that these guidelines be entrenched in the Theatres Act.

We also protest the withdrawal of the Theatres Act from the jurisdiction of part I of the Statutory Powers Procedure Act. We feel this deprives individuals or companies contesting a board decision of the rights to procedural protection offered by the Statutory Powers Procedure Act.

We object to the right of the censor board granted in the amendments in the bill to clauses 12(2)(c), 42(2)(c) and 55(1)(b) of the act to refuse licences for distribution, exhibition and projection on the grounds that "the applicant is a corporation and the past conduct of an officer, director or shareholder affords reasonable grounds for belief that the applicant will not comply with this act and the regulations."

"Reasonable grounds for belief" is not defined and therefore leaves no protection against discriminatory decisions. These clauses could be used to penalize and demobilize companies whose officers and membership have previously protested against activities or decisions of the censor board.

In short, we feel that the proposed amendments to the Theatres Act in Bill 82 are even more repressive and restrictive than the existing act and that the bill, if it is passed, will severely restrict the freedom of cultural expression in Ontario and will permit the board to discriminate against and penalize those artists or companies who choose to protest this legislation. We feel that the act permits far too much subjective assessment of what is morally or socially acceptable to the community to be decided by the board itself.

In an attempt to control the dissemination of pornography in this province the government, if it passes this bill, will be putting in place an appointed board with the powers to muzzle any form of artistic and cultural expression it deems unacceptable. Please do not let this happen. We ask you to suggest to the Legislature that third reading of this bill be delayed so that a committee of the House can be struck to investigate the infringement of civil rights that the act will represent.

Mr. Chairman: Thank you very much for your presentation. In fairness to our final witness I would like to allow him 15 minutes, so we will try to keep the questions to about six minutes.

Mr. Williams: As a matter of interest, the second sentence in the last paragraph on page 2 of your brief says, "The Canadian Filmmakers' Distribution Centre alone carries 1,000 films, the majority of which are noncontroversial films of an educational nature." I gather, then, that the minority of your films are of a controversial nature. If so, what is the

controversial nature of those films?

Ms. Renouf: We do have a collection of films that are experimental, that are unusual in form or content and that have on occasion been decreed by the censor board to be restricted material.

Mr. Williams: Can you give us some examples?

Mr. Armatage: One of these films was mentioned in Carole Corbeil's column in the paper this morning. It is a film by Bruce Elder, who is one of Canada's most eminent filmmakers, called The Art of Worldly Wisdom.

Another one is by Al Razutis, another experimental filmmaker. It is called A Message from Our Sponsor and it is a film against the exploitation of women in advertising, done in an experimental context.

The third is by Michael Snow, who is an internationally known Canadian artist whose films Presents and Rameau's Nephew were both challenged by the censor board. Rameau's Nephew was allowed to be shown only in the Art Gallery of Ontario.

Mr. Williams: Experimental in what sense? I am missing something here. You say they are experimental films.

Ms. Armatage: They are as far as you could get from the commercial narrative fiction feature-length films that are the staple fare of commercial film venues. They are experimental in a wide variety of ways and approach film as an art form that can be manipulated and challenged in the way that a sculpture or a painting would challenge the plastic arts.

5:20 p.m.

Ms. Renouf: They tend not to use a traditional narrative format, or they tend to use the camera angles in an unusual fashion. It has a wide gamut. Experimentals are a very large type of--

Mr. Williams: Mr. Chairman, if I might, I just have one more question. I would like to pursue that further, unless Mr. Crosbie or Mary Brown wish to comment.

Mr. Crosbie: Could you tell me the last time any of the films you mentioned, other than A Message From Our Sponsor, has been refused a permit?

Ms. Armatage: The last time?

Mr. Crosbie: Yes.

Ms. Armatage: You mean the date?

Mr. Crosbie: Yes. It is my information that they have not been refused a permit by the current board. They have been shown regularly in the last three or four years.

Ms. Armatage: Rameau's Nephew, the Michael Snow film, was scheduled--and I am not sure of the date, but I think it is within the last two years; there was an extensive retrospective of his work. The decision of the board was that the film could be shown at the Art Gallery of Ontario--well, John Porter of The Funnel is here. Do you know the date? Is it within two years?

Interjection.

Ms. Armatage: Within three or four years. It was allowed to be shown at the Art Gallery of Ontario, but not at The Funnel, a theatre which specializes in experimental films.

Mr. Crosbie: It has been shown at The Funnel, has it not? That is my information.

Ms. Renouf: Since then?

Interjections.

Mr. Crosbie: When you apply for a permit, you have a permit for it, that is what I am saying. Then, in the last three or four years, it has not been refused a permit. None of those films, except A Message From Our Sponsor--which I understand ran into distribution trouble right across country, not just in Ontario.

Ms. Renouf: We are not protesting past decisions of the board. We are concerned about--

Mr. Crosbie: Yes, but those were examples you cited--

Ms. Renouf: Yes, but we were asked--

Mr. Crosbie: --to demonstrate the unreasonable nature of the board, that was all. I was just trying to demonstrate that those were not very good examples.

Mr. Elston: If I might interject, those are also examples used in the Art Gallery of Ontario's position on censorship paper, which they have given. All four of those--

Interjections.

Mr. Elston: They mentioned Rameau's Nephew as having being scheduled for March 26, which I presume was this year. A cut was demanded by the board and as a result it has not been shown.

Mr. Chairman: With that--I am sorry to interrupt again. It just seems that I have to be the heavy here. Thank you very much, ladies, for being here. We have one more witness. I would like to give him an opportunity to state his position before the committee. Thank you very much.

Professor Fred Wilson, the University of Toronto Faculty Association. Professor Wilson, will you identify yourself?

UNIVERSITY OF TORONTO FACULTY ASSOCIATION
AND CANADIAN ASSOCIATION OF UNIVERSITY TEACHERS

Mr. Wilson: I am Professor Wilson of the University of Toronto Faculty Association, also representing the Canadian Association of University Teachers. With me is Howard Epstein, who represents the Ontario Confederation of University Faculty Associations, and Dr. Helen Breslauer, who is research officer for OCUFA. I have a copy of our presentation here.

Mr. Chairman: Please.

Mr. Wilson: Given the length of time, it is a short presentation. I will try to present my ideas very briefly.

We are not concerned here to make representations on the general purpose of Bill 82. However, both the University of Toronto Faculty Association, representing the professors and librarians of that university, and the Canadian Association of University Teachers, which represents these same people nationally, are concerned with the threat to academic freedom in both teaching and research. This is our main concern, and this is what we would like to address.

Not only is there a threat to academic freedom, but it does seem that the bill proposes to expand the powers of the board to a level of regulation which we think is bureaucratically impractical, given the some 10,000 titles of audio-visual items available in Ontario universities.

Our problems begin with the notion of distribution, which seems to us insufficiently precise, and could conceivably cover any film or videotape loaned by an audio-visual library for educational and research purposes.

Section 3 of the bill also gives to the modified board the power to cut or edit without regulations defined in the act. This is of particular concern to us, because there is the possibility that, given the enlarged powers of the board and given the vagueness of the notion of distribution, the board may at some point decide that it wishes to cut or edit the titles in the university library.

Given the vagueness of the regulations, which are not specified in the act, there are a number of films that are quite conceivably not acceptable to people in certain communities in Ontario; I think of films that are available for teaching dissection in departments of anatomy, things in behavioural science or social work, certain ethnographic films that present rites in other countries that may not be acceptable to people in various communities in Ontario. We would be very much opposed to the power of the board to edit or cut these. It would seem to us to interfere with academic freedom and research.

We would also be opposed to the suggestion made in section 15 of the bill, the requirement that all films be classified, in particular with respect to the notion of restriction to people who are over 18. One can imagine coming into an anatomy 100 class and

saying, "All right, class, those under 18 cannot view the following film on dissection." It seems to us that this is an implicit possibility here.

We are not saying it is the intention of the proposers actually to do that; I frankly doubt that it is the intention of the proposers to do that, but we are worried about the possibility that is there in the vagueness of the definitions.

Section 6 of the bill extends the definition of a theatre to premises used for the exhibition of nonstandard film. This, one thinks, might be construed in future to cover in-library screenings or, indeed, even classroom screenings in the universities.

Section 19 of the bill requires the licensing of projectors. Could this be construed to mean that all equipment in an audio-visual library would have to be licensed by the board?

It seems to us that these are all significant questions. If those powers are really implicit in the act as it stands, as we think they are, then in our view it is a real threat to academic freedom, both in teaching and in research. The remedy we would suggest is that an exemption be built in for educational institutions in general.

I will stop there. My colleague from the Ontario Confederation of University Faculty Associations has a somewhat more specific proposal for the exemption.

Mr. Epstein: Indeed, I think you should find before you, Mr. Chairman and members of the committee, an actual draft of a clause that might be inserted.

We have exactly the same concerns as Mr. Wilson has expressed. I have not drafted this with the intention of saying that this clause is perhaps perfect for achieving its intended objective; I am sure the people who act as your advisers in the drafting of it can do better. But it follows the framework suggested by the various aspects of the bill before you.

I should point out that we are aware of regulation 2 under the existing Theatres Act, which provides an exemption for churches, schools, hospitals or charitable organizations. We would not propose that universities simply be included in that list. It seems to me, first, much safer that the exemption be protected by way of a section of the act and not by regulation; which is much more easily changed. Second, the simple phrasing of regulation 2 is inadequate to deal with all the points that are implied by Bill 82.

The objective is to address questions of protection of matters that are bound to come up by way of academic freedom inside the institution--indeed, matters of perfectly legitimate research.

Mr. Chairman: Thank you very much, gentlemen. Before I go to the questioners I would like to ask Mr. Crosbie if he has a

response.

5:30 p.m.

Mr. Crosbie: Mr. Chairman, it would be our intent in developing the regulations as opposed to the act--and I realize the observation was made that they prefer to see this in the act--that there have to be exemptions for certain classes of films and places. We would be happy to sit down with this association and work out some of these definitions.

I might say what we have done follows in some part the English precedent. In effect, they have exempted educational films in certain circumstances. Their approach is rather interesting because they then identify certain types of material. Even though an educational film may have a general exemption, if it gets into areas of certain types of very explicit sex, or that type of thing, the English film board reserves the right to call it in.

How we work this out in the specifics of regulations is something we would like to discuss with the association and we would be quite happy to meet with it.

Mr. Epstein: We would ask that serious consideration be given to the possibility of including it in the act itself by way of a section. Unless there is an extreme rush, I think a clause could be constructed that would suit all the purposes. if it is necessary for regulation.

Hon. Mr. Elgie: There are a number of exemptions and it would be impossible to include each and every one in the act. You would have to amend it at certain times, if you chose to do so. However, as you say, regulations can be amended on a regular basis.

I would suggest the fact that the board now has to file an annual report, which the Legislature can refer to a committee, gives us a lot of opportunity to review what has happened in the previous year and register any complaints people have.

Mr. Epstein: Of course, the problem is it is much easier to deal with it now than it will be later.

Mr. Elston: That theory is always interesting; but, as you know, work load does not always accommodate the thorough review you just indicated.

Hon. Mr. Elgie: We can make the time if we want to.

Mr. Crosbie: Mr. Chairman, I would like to suggest that if we had been dealing with this problem three years ago, we might have had an entirely different concept of how we should handle videocassettes. It is a rapidly developing area of technology.

There is merit in keeping some flexibility in the process of determining how it will be regulated. That is one advantage of the regulations and, as the minister says, it is coupled with an ample opportunity on an annual basis to review, or for that matter raise a question in the House any time somebody feels we are out of line.

Mr. Epstein: Are we to take it there is agreement with the principle of protecting the university as a place of research, scholarship and academic freedom, and that the question is simply how we are to guarantee that? Or are there people on the committee who are opposed to the notion we were presenting?

Mr. Reed: I am opposed to the bill.

Mr. Chairman: Are you ready to go public? Basically that could come up next week in the House. I would like to move on to Mr. Elston, who had a few questions. Mr. Williams and Mr. Allen had some. We will go on until the bell rings.

Mr. Elston: I was sort of becoming provoked again about the flexibility of the public, as opposed to the private, review of the standards. Of course, we are getting into the question we dealt with briefly yesterday concerning Mr. Williams's interjection. However, I really do think what Mr. Crosbie just said--that is, the regulations can more easily be amended by people inside the ministry--does not augur well for the role of the Legislative Assembly in putting together some kind of act that addresses the issue of community standards. I want to bring that point up again.

My question is with respect to the actual section that has been suggested. I suggest it should be broadened. I know the universities are a very important part of our education system, but there are others. Colleges, for instance, as well: the film-making courses they provide or whatever, literature, that type of thing, all have to be dealt with. I would urge special consideration to the education exemptions.

As well, Dr. Sommers spoke of the concerns he had. I know Mr. Crosbie assured him about the situation in which there is a doctor-patient relationship. There are others in which a professional is involved in an education seminar, for instance, or a presentation of material he believes will assist in instructing a broader audience than his patients. At that time we discussed the possible need for an educational classification of material which then would be acceptable for distribution. I urge you again to consider that.

The other comment I have is with respect to a call I received yesterday from Liz Avison, who is writing a paper for the Ontario Film Association Inc. She outlines some of the same concerns as the faculty association has.

Mr. Wilson: She is one of our members.

Mr. Elston: Yes, I presumed that, and she works at the library. She expresses again a concern that the educational aspects and the dissemination of material through libraries, particularly in educational institutions, be considered for special attention.

Those are my comments on this point. I realize we are running out of time.

Mr. Crosbie: Could I make one quick comment on that? I would be less concerned about this if I were not aware of certain experiences we have had with university-cosponsored film festivals. Where do you put those in your category of events? Does the fact that a university sponsors a film festival automatically attach to that festival complete exemption from the rules of censorship and classification?

Mr. Elston: That may have to go unanswered. There is another question, which is: Does a professor of medicine, when he is showing one of the videos on dissection, get some indirect gain in a larger sense from using that film because he earns his salary by his teaching?

There are a number of questions you have to ask as to whether it is an education process or one of entertainment. That was a question I raised with Dr. Sommers yesterday: Is there a line he could draw? Those questions are probably going to have to be addressed and it is a good reason why the public's representatives, the members of parliament, for instance, should have a lot of input with respect to your regulations or whatever.

This is my last point, Mr. Chairman. The other concern I have with regulations is, even though there are notices of changes printed in the Ontario Gazette, the Ontario Gazette is not the most widely read of Ontario's literature.

Hon. Mr. Elgie: Do you not read it?

Mr. Elston: I do; I review it every week. The problem is not everybody does.

Hon. Mr. Elgie: Leave those medical students alone the first day; they have enough trouble handling that cadaver. You do not show movies the first day. I could not handle my stomach the first day, let alone look at a movie. So do not worry about the first day.

Mr. Elston: He is still having problems handling his ministry but that is another question.

Hon. Mr. Elgie: You do not really mean that; otherwise, you and I would have a problem.

Mr. Elston: The concern I do have is that the regulations being developed and amended outside the public forum can be changed without adequate notice in the public forum as well. That is a concern I want to express to the minister. We have left a number of items up in the air to be dealt with by those regulations and they are very important with respect to the operation of this act.

Mr. Williams: Taking the example given by the deputy minister a step further, my understanding is that a lot of universities have movie nights on campus once or twice a week. Could it be projected to the point that the university grounds would be considered sacred and free from--

Mr. Epstein: To answer the question put by Mr. Crosbie before, I prefer yes, but if he and the committee prefer no, put in a subsection 2 that exempts wholly commercial activities carried on by or on the university premises. It is very easy to draft. I would be very happy to do it for you.

Hon. Mr. Elgie: It is a generous offer.

Mr. Wilson: The basic distinction is clear enough, whether or not it is for educational purposes or whether or not it is for commercial purposes. The borderline cases are clear and we would all have difficulty talking about some of them.

However, there is a basic distinction between the students' administrative council of the University of Toronto organizing a movie night at which it hopes to make a little profit and the anatomy department or the audio-visual library providing such films for educational purposes. As a member of the faculty association, I have no trouble today saying the commercial aspect is one thing but the educational aspect is quite different. That is what we are concerned about, the educational aspect, teaching and research.

I would like to respond to the point about regulations. In our view, it is important the exemption of universities be difficult to change. That is why we would much prefer it to be built into the act, rather than be built into the regulations.

5:40 p.m.

Mr. Allen: Thank you very much for the precision of your observations you have made before us about various aspects of the bill. They are helpful and the case you make is very compelling as far as the universities are concerned.

I do note one line in your brief and it gives me some trouble. It is simply the one setting aside the larger question of censorship.

I ask both of you whether you have any observations to make on the larger question of censorship as it pertains to the Theatres Act?

Mr. Wilson: Certainly the CAUT, the Canadian Association of University Teachers, has a long-standing dislike of almost all forms of censorship and, in particular, the extension of censorship into the university context. At the association, there is no specific position on videotapes, for example, and no specific concern with respect to this act.

We have not discussed it at the CAUT board but we have made a number of representations to the federal government concerning bills to amend the definition of obscenity. It has always had as its position that there be exemption for scientific research, for literature and for the theatre arts, and these exemptions, in our view, should be as broad as possible.

Mr. Epstein: It seems clear that an organization which, in Ontario, represents more than 10,000 university faculty and which nationally has 26,000 faculty would include members with a large diversity of views. It is obvious the briefs did not include wholesale condemnations of the bill because there is no official policy which addresses that. If there were, it would have been put forward, but there is not.

Mr. Allen: I understand that and I understand the frame of reference within which you have to work as an organization.

My next question is perhaps tempting you too much beyond that ground but I want to ask it anyway, because it gave me some trouble when we were listening to the presentation of the Canadian Filmmakers' Distribution Centre. An official of the government was able to tell those making presentations what showings had been made of a particular film or films in particular settings.

I must say, it took my breath away and it raised some question as to whether we are backing ourselves into a very questionable policing situation with regard to expression of all kinds in this medium. Does that trouble you?

Mr. Epstein: In the universities, we are bound to admire thorough preparation. On the other hand, I think we would not wish to see the activities of individual faculty members or researchers, be they graduate students or other scholars in the universities, known to that extent through official channels by the bureaucracy. You are quite correct.

Mr. Allen: Would you prefer a structure in which, while there was review and classification and proposals with respect to excisions, amendments and so on of materials that, none the less, the agency in question was not making a final judgement or precluding showing but would permit you the freedom to show and exhibit and take your chances, you hope, with some amended obscenity provisions in the Criminal Code?

Mr. Epstein: Yes.

Mr. Reed: I want to make the point that the debate with this presentation underlines the view I have taken. We are getting into a request for an exemption, which will state it is all right to see it at the university but it is not all right to see it at home. In other words, we are setting up some elitism here, which underlines--and I think my friend here said it probably as well as anyone--that we are really driving into the mud puddle very quickly.

I am paraphrasing what he said, but the fact is that certainly these people need the freedom to express, but the contention has to be that, just because it is a university, why should it be limited? Why should it rest there?

This debate, I am sure, happened the first time in the western world with the establishment of the Gutenberg printing press, and now we have gone on with each new technology and cried wolf. The whole thing is ludicrous to me.

Mr. Chairman: The debate will continue next week, I am afraid. We thank you for coming and we are sorry we could not give you a little more time. The meeting is adjourned until tomorrow after routine proceedings.

The committee adjourned at 5:46 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

THEATRES AMENDMENT ACT

FRIDAY, DECEMBER 7, 1984

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Swart, M. L. (Welland-Thorold NDP)
Williams, J. R. (Orillia PC)

Also taking part:

Allen, R. (Hamilton West NDP)
Elgie, Hon. R. G., Minister of Consumer and Commercial
Relations (York East PC)

Clerk: Carrozza, F.

From the Ministry of Consumer and Commercial Relations:
Crosbie, D. A., Deputy Minister

Witnesses:

From Feminists Against Censorship:

Ditta, S., Founder-Member
Maddowall, C., Member

Noble, B., Alderman, City of York

From the Canadian Motion Picture Distributors Association:

Bowerbank, J., Chairman, Board of Directors and Vice-President,
CBS-Fox Video (Canada) Ltd.
Roth, M., Executive Director

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Friday, December 7, 1984

The committee met at 11:49 a.m. in room 151.

THEATRES AMENDMENT ACT
(concluded)

Resuming the adjourned consideration of Bill 82, An Act to amend the Theatres Act.

Mr. Chairman: We are resuming Bill 82 and we are a little late in starting. We were waiting for the first witness, Alderman Ben Nobleman, but Mr. Nobleman has not arrived yet.

We have a second group, Feminists Against Censorship, with Ms. Varda Burftyn and Ms. Susane Ditta. Ladies, would you please come to the front here at the table. Please introduce yourselves for the record, and state your positions.

FEMINISTS AGAINST CENSORSHIP

Ms. MacDowall: Varda Burftyn is unable to make it today; so Feminists Against Censorship have agreed to allow me to join them. Previous witnesses did not have an opportunity on Monday to deal with any questions, as we were running late.

Ms. Ditta: My name is Susan Ditta. I am an arts manager. I have worked for a number of arts organizations in Ontario, including the Canadian Images Film Festival and Artspace, a gallery in Peterborough.

I am a founding member of a new group that has been formed, called Feminists Against Censorship. It is a national group, composed of women who have come together to fight and work around the censorship issue. These women include many of Canada's most outstanding feminists--I am sure you will recognize their names; Lyn King, June Callwood and Myrna Kostash--and a number of other well-known people who have spoken often on women's issues.

They all have distinguished careers in the fields of law, journalism, broadcasting, film production and arts management. Perhaps even more important, many of them are women who have pioneered women's shelters and services for young women and who have distinguished careers in the trade union movement as well.

We have come here today to talk to you primarily because we feel there is a serious misconception in Ontario and perhaps all across Canada. We believe it is a misconception that there exists a consensus among women and among feminists that censorship is the way to fight pornography and violence against women.

This is simply not the case. There is no such consensus. In fact, particularly in the past few months, we have seen more and

more women become vocal about censorship, having had time to review what is a very complex issue. They are saying no to censorship as a way of fighting pornography.

I should emphasize that some of these women were pioneers in writing against pornography, against sexism in the media and against all kinds of abuse of women. These are women who started the women's movement in Canada.

Why are they saying no to censorship? They think it is a dangerous and ineffective strategy. There is something that gets to me quite a bit when I engage in public discussion of these issues.

The arguments these women are making against censorship go far beyond the arguments of civil libertarians. They are not just talking about protecting freedom of speech. They feel censorship will inhibit their work as feminists, will hold down the feminist cause and will hinder the battle against pornography and violence against women.

When our group came to review Bill 82, we felt very strongly that it would have a very bad effect on our efforts to fight pornography. Reviewing the legislation, we were unable to determine how it would advance our cause as women.

We know that violent, sexist images pervade all the media. Everywhere we look they are in pornography, in commercials and in advertising in all kinds of magazines. Often in the more commercial media they have an innocent masquerade; because they are not in Penthouse, the same images seem very innocent.

It is a battle we fight every day. One of the most effective ways we can fight this battle against sexist, violent imagery is to present alternative images. We believe we must have our view of women--a positive view of women, a creative view of the world--before the public to see. We have to produce these alternative images and distribute them. We feel censorship legislation runs contrary to our efforts to do this.

Unfortunately, Bill 82 seems to strengthen that legislation. In fact, although it may not intend to do this, it seems to target those very people; by that I mean feminist artists and feminist producers of films and videotapes who are struggling to present the alternative.

Bill 82, we feel, in effect creates a refined attack on the efforts of those people who are trying to deal with the issue of violence against women and with the issue of pornography. You will ask me how it does that, and to answer that question I have to try to paint for you a picture of the individual woman working as an artist, a film producer, an educator, an exhibitor or a distributor.

These people do not have very much money. They do not have a lot of lawyers. They have very little capital. Most artists, and particularly women artists, live below the poverty line. All the work they do is done on a shoestring budget with a minimum of labour. They have very few resources at their disposal.

When they are genuinely trying to do their work to advance the cause of women and they come up against legislation like Bill 82, they come up against something that is going to slow down their work and hold back their resources and in many cases can just make them give up on their work altogether.

I know the bill is not intended to do that, I know the work of the theatres branch is not intended to do that, but in many cases that is what happens.

When the bill talks about distributors, I think many people have the sense of a company or a government agency that is distributing the film. Many women working in this field are neither a company nor a government agency; they are one person circulating her own tapes or films, or the films or tapes are being circulated by a nonprofit organization on her behalf, for example, by the Canadian Filmmakers' Distribution Centre.

These are people who are working 80 hours a week, many of them for less than minimum wage, to do things that they think are important, things that contribute to the development of their community and of their society.

When they come face to face with things like licensing, permits and all of that kind of thing, it becomes a nightmare for them. Again, it is not intended to be that way, but for a small, nonprofit person with very little money and very little staff who is trying to deal with these regulations, that is the reality. It becomes impossible for her to do it.

These women are like many small businessmen who are trying to do the most effective and efficient job they can and are running up against a lot of red tape, problems and costs. It is not intended to be that way, but when you add up telephone calls, couriers, bus services and typists to get all the material together and come to terms with the requirements, it becomes very difficult, if not impossible, to keep going.

There has also been the problem that in neither the existing legislation nor the proposed legislation are any standards outlined for censorship decisions, for what can be censored in the law. This is a problem that everyone is familiar with and something that was dealt with in the courts recently.

When no standards are outlined in the law, it is well documented that many women have run up against the problem of their films--feminist films, anti-porn films--being suppressed by censorship legislation. Nobody intends this to be the case, but this is how these kinds of laws work.

We have films like *A Message From Our Sponsor, Not a Love Story* and *Born in Flames* all running into problems. These are all films produced by women who do not have a lot of financial resources to keep up the fight to get their material before the public. That is what we have to realize: they are fighting to get the alternative image before the public.

The irony is that the commercial film producers have all

kinds of resources to keep up that fight, to get the permits in, to get the licences in, to get lawyers. They make a few snips in their films and take out just what is required, but the basic sexist message of their films remains.

You get films like *Dressed to Kill* and *Quest for Fire*. In *Quest for Fire* a young girl is repeatedly raped, or it is implied in that film that she is raped, and that this is fine; it was part of society back then and away we all go. Those films technically can get through the board. Their message is there, though.

What happens is that the alternative producers cannot keep up the battle to get all this material through and processed in a way that is acceptable. Their material does not get shown. The alternative image is not presented.

12 noon

One of the other problems that concerns Feminists Against Censorship is the fact that the public dollars spent on censorship legislation seem to be such a waste. If those dollars were spent on programs for women instead of on paper, offices and more administrators, we feel something might start to happen regarding violence against women in society.

When we think about Bill 82, we have to make it very clear that we are not filling a void. There is censorship legislation in Ontario. That legislation, and the way the law works, can be applied to stop people from exhibiting pornography. We feel, however, Bill 82 will create a legislative burden that will crush those people who are trying to help. It will, in effect, ripple over those people who are trying to hurt and who create the problem in the first place.

As feminists, we have committed our lives to making the world a better place for women. It is something we do every day in our work, private lives and recreational activity. We feel Bill 82 is a step backward, not forward, in that effort.

I will be pleased to answer any specific questions you have about why we think the legislation hinders artists and feminist producers from doing the work they need to do to present an alternative image, or any other questions you have. I do not know whether Cyndra would like to comment.

Ms. MacDowall: The points I wanted to bring up were in recognition of the expansion of the powers of the Ontario Film Review Board, as it is soon to be named.

Has there been any report made to this committee, or to the Legislature, on the volume of film and videotapes in this province and the expansion of the bureaucracy that would be needed to cope with that?

By a conservative estimate, there are somewhere in excess of 20,000 noncommercial films circulating in this province. Those are titles of films. There can be well up to 50,000 noncommercial films titles. We estimate equally that there will be that many videotapes.

You are looking at something like 100,000 titles. Each of those films and tapes would have to be reviewed to accommodate the requirements of Bill 82. That is one aspect; that is just the films and tapes. The licensing of all the equipment will also require enormous bureaucratic expansion.

We feel that under Bill 82, the cost to simply administer this bill equitably will be extraordinary. I do not believe the government is prepared for those costs to ensure that Bill 82 is fulfilled.

I seriously question the speed of the attempt to bring this bill into place, given that the government will be in a position of being required by every video dealer in this province to have given some sort of approval to up to 50,000 videotapes within two or three weeks, if this bill goes through.

Mr. Chairman: Thank you very much, ladies. Before we go to the questioner--and it will be Mr. Spensieri--there is a question on bureaucratic expansion. Mr. Crosbie, can you help them out a little bit?

Mr. Crosbie: I think I can, Mr. Chairman.

I would like to start with the last observation first. The passage of this legislation does not require that 50,000 videos be approved in a three-week period. Obviously, as in any other legislation where administrative practices have to be put in place, there is the capacity to bring the legislation into place in a timed fashion so that the administrative difficulties can be dealt with in a timely way.

I would point out that the United Kingdom brought in legislation of this type last year. They were faced with exactly the same problem.

There are ways and means of dealing with it. We have talked to other people who have been before the committee and who are worried about the many thousands of titles of educational films. The UK dealt with that by exempting educational films. There are methods of dealing with various categories which are not intended to be swept into the net.

We talk about the bureaucratic process interfering with the films mentioned. Not a Love Story was handled in exactly the way the National Film Board--which produced it and presumably financed it--asked it to be dealt with. They had a marketing plan for that film which required the very practice followed in Ontario. I do not know why people keep citing that film as one where the bureaucratic process has interfered.

The Women in Flames, as I understand, has been shown the way it was produced, and it has not been interfered with. A Message From Our Sponsors, as was noted the other day, is a film that has run into difficulty across the country because of the explicit nature of the material shown.

In short, I realize it is a large problem. Nobody is going

to minimize the fact there is a lot of work to be done, but I do not think the size of the problem is a justification for not addressing it. If that were a criterion, we would walk away from a lot of problems we are faced with.

Mr. Spensieri: I am concerned about a thesis you seem to be advancing. If I can put it fairly, it is that if we take an objective act--let us say an act of rape, which in itself has been considered by the present arrangement to be unacceptable in some situations--it is supposed to be dealt with in one way in a feminist film. If the same objective act is in an ethnic film, it must be dealt with in another way, and if the same is act done in a lesbian--for want of a better word--film, it is supposed to be dealt with in another way.

I am uncomfortable and I would like you to explain further how you would justify different treatment of the same act by different parties. I can see, for instance, certain purely cultural contexts where an act might be not as objectionable in a street scene in Naples as it might be in a street scene in North Bay, but I cannot see where you are advancing that theory. Could you zero in on that?

Ms. Ditta: Perhaps I did not make myself clear. I agree with you 100 per cent. What I object to is the attempt to make those kind of distinctions. What happens is, as I said, in a film like Quest for Fire it becomes okay to have that kind of scene in it. In a film that might deal, for example, with incest--which objectively we all disapprove of--such as Rien Qu'un Jeu, the film Just a Game, because it deals very explicitly with that issue, it is not acceptable to have it in the film. I agree with you entirely.

I do not feel it is possible to make those kinds of distinctions. When legislation such as Bill 82 attempts to do that, without putting any standards in place that would at least let us have a public debate and a parliamentary argument about the questions you have raised, what happens--and what has repeatedly happened--is that films which place it in a more acceptable context get through, and films which in many cases try to deal with the reality and put it in a different context do not get through.

Mr. Spensieri: Just as a follow-up, do you feel the present review board would not have a component, to your knowledge, that would react favourably, for instance, to a feminist produced film, such as the one you advised us of? Is it a question of the composition of the board members or is it a question of the acceptability of the concept?

Ms. Ditta: My personal view is I do not approve of prior restraint in any form. That is my personal opinion.

12:10 p.m.

Ms. MacDowall: Could I follow up this question about the idea of context? You are talking about context there. It seems interesting that Mr. Crosbie would suggest we would seek to exempt

an educational context, because obviously we are looking at contextual approaches to this problem.

Mr. Spensieri: In fairness, I think the statement was that the type of audience would be uninvited. Contained audiences that would review, for instance, medical tapes for pathology purposes or treatment are one thing. However, if there is a general audience, albeit a feminist one, then you are into the public realm. I think that is the only distinction Mr. Crosbie was drawing.

Mr. Crosbie: If I could, Mr. Chairman, the point was made to us yesterday by the university officials that they use film to show dissection techniques or as part of anatomy training. I think it is one thing to have a film for that purpose. It is another to have a snuff film showing the same body being cut up with gratuitous violence.

I also pointed out that in the United Kingdom's rules on educational films, it is recognized there are literally thousands of films which do not contravene any of the standards that result in censorship. In effect, they say in their legislation, "Any educational film is exempt unless it deals with explicit sex," etc., in which case even in England the educational films are subject to review.

As I understand from one of the persons making a presentation here from one of the organizations you mentioned--I forget the name of it but it is involved with video and film distribution--the majority of their films contain innocent subject matter, to use my own language, which would not offend anyone. There are ways and means of limiting the amount of film with which we must necessarily immediately deal.

Ms. MacDowall: That is indeed an element of concern, because what you are getting to is that sex education now becomes extraordinarily subject to restrictions. Socially, sex education gets into this whole other area that is horrible. We feel the only way to deal with sexism and misogyny in this society is by having more sex education.

Mr. Crosbie: I am not objecting to it at all. All I am suggesting to you is that if you left the loophole you wanted and I was producer of pornographic films, I would simply put them in some sort of flimsy context and say: "I am going to put out a film about the hazards of rape," and then have the most vicious sorts set in a very educational context, of course. You have to consider that aspect of the regulatory problem.

I am not minimizing the problem of trying to deal with the legitimate need for films on important public issues. We have to recognize there are ways and means of using that exemption for private gain or improper purposes.

Mr. Chairman: Excuse me, I must allow Mr. Allen to have a question or two. We have approximately five or six minutes, sir.

Mr. Allen: I suppose my brief comment is that it would

be awfully easy to arrange those exemptions on a kind of institutional basis. You could set up something that engages in legitimate education and, therefore, exemptions would be allowed, or you could classify a certain film produced by this agency because it is a satisfactory deliverer of those kinds of productions.

It is really the same question Dr. Sommers asked yesterday as to whether there is not a legitimate and proper role for self-education and, therefore, such materials should be widely available outside the formal agencies that are deemed okay.

Obviously our problem is not with the majority of videotapes and films that are innocent, so to speak. What that means, I am never quite sure in these discussions. Or on the other side, what guilt presumes? It is that area, where there are films whose context provides difficulties of judgement, that is precisely the area of difficulty.

I want to ask you two questions that I do not think you addressed. First, do you have a problem, for example, with the Criminal Code provisions on the matter, either as they stand or as the amendments have been proposed, with respect to that as a kind of overarching public surveillance mechanism and control for the more extreme varieties of videotape and film?

Second, do you see any role for a properly constructed film review process by which distributors who have problems in knowing whether they are skirting close to the law or against the law, or whether they are going to be charged or not charged, can at least have an opportunity to have films viewed and receive some advice on whether, in part or in their entirety, they are simply too offensive and objectionable for circulation, without having the right in that process to prohibit or to insist that they be cut and to allow a distributor or individual dealer to take his chances on the open market, so to speak?

Ms. Ditta: It seems to me there is legislation in place and what we are talking about at this point is additional legislation.

Mr. Allen: You are not concerned about what is in place.

Ms. Ditta: It seems to me that what is in place is stringent enough as it is and I can see no benefit. Perhaps I am making a wild assumption, but I assume that the purpose of the legislation is to stop pornography and, by some extrapolation of that, to stop violence against women.

If that is the purpose of the legislation, I believe there is sufficient legislation in place to do that when it comes to film and video. I do not understand how Bill 82 will do any more. In fact, all I can see is that Bill 82 will hinder the people who are trying to fight the good fight.

I would take issue about what was said about Not a Love Story, A Message From Our Sponsor and Born in Flames, that there is no interference whatsoever. In fact, many people in the arts,

film and educational communities had to fight for a long time and spend a lot of money to make it possible for what I believe very strongly are educational films to be seen, and to be seen by a certain public. We are not talking about putting them on Yonge Street in a porn studio; we are talking about showing them at film festivals, art galleries, museums and community centres. That is what we are talking about.

I would agree with you that it is quite valuable for people to be able to have others review their films and give suggestions about what is problematic and what is not problematic. I am quite in favour of a classification system that would guide parents and the public in general concerning the content of the film, the level of film and that kind of thing. I think all of that would be very helpful, but that is a very different ball game from what is being proposed in Bill 82.

It is so difficult sometimes to get across to people our day-to-day experience in dealing with this legislation; what it means for those of us who exhibit, produce and distribute film and videotape on a day-to-day basis to deal with this legislation. It is a real problem for all of us, and it has been for the last three years.

We are people who are not interested in purveying pornography; that is the irony. Those people seem to slip by all of this without a great deal of trouble. Cuts are demanded in their films. It is true, as the gentleman here was saying, that they can put their film in a different context, put a rape scene in a different context, or they can cut that one little explicit image out so that the film goes through, but the message of the film is still there.

What I am trying to argue is that the small, independent producer, very often a private, individual woman, cannot fight that fight; it is so tiring. No one sets it out to be that way, but that is what happens; that is our day-to-day reality. For those of us who work in art galleries, festivals and women's films trying to deal with all of this it has become an incredible problem financially, emotionally and from the point of view of labour, time and energy.

12:20 p.m.

What I fear is that people are going to curtail their film and video programming. You do not have to go through this in dance, in theatre, when you have a poetry reading or someone comes in to give a lecture, but you do when you want to show film and video. You do if you want to produce film and video.

What is going to happen is that, again, the people fighting the good fight are going to be pushed right under the carpet.

Mr. Chairman: With that, Ms. Ditta, thank you very much. Our half hour has gone by rather quickly. Mr. Nobleman has arrived. We want to thank you both for appearing before the committee. We have the message of those small producers. Thank you.

Next, we have Alderman Ben Nobleman of North York--the city of York. My apologies. The great city of York, certainly. Mr. Nobleman, please proceed with your presentation.

ALDERMAN BEN NOBLEMAN, CITY OF YORK

Alderman Nobleman: Mr. Chairman, thank you for hearing me this morning. I have been an alderman in the city of York for the past 18 years. We have a motion that I will read shortly, and I think you all have a copy of that.

I also want to say that I am a past president of the Toronto branch of the Association of Canadian Television and Radio Artists. As the parent of a 16-year-old son, I am very concerned about the increase in pornography throughout Canada. I wish to support and commend the government legislation in Bill 82. I want to highly commend Dr. Elgie for his excellent statement on May 28, 1984, from which I will briefly quote:

"Let there be no doubt among the members of this House that the purveyors of porn would be delighted to see us turn our backs on the question of basic and decent community standards....The issue is not one of the film and video pornographer's right to exploit the market by producing and selling anything he likes, but rather the right of a community to protect itself from the effects of his work."

I believe a recent Gallup poll indicated that a large majority of people in this province, as well as throughout Canada, want strong legislation against violence in the media. In my opinion, there is too much violence and sex on television and in the movies. Our teenagers regularly watch a lot of garbage coming from Hollywood, where the producers are only interested in a fast buck. In the recent case of an 18-year-old boy who murdered a policeman, it was found that he had watched a violent movie and that this may have affected his decision to murder a policeman.

I will read the motion that was passed by a vote of eight to two in the city of York on October 15.

"Whereas there is a proliferation of violence portrayed on television, in films and in the print media; and whereas the general public and particularly young people can be influenced by exposure to such violence in the media; and whereas there appears to be a relationship between some acts of public violence and portrayals of criminal and violent acts and the media; therefore be it resolved that the city of York council urge:

"(a) that the film and television industries, recognizing their influence on viewers, become more responsible in the production of films and programs containing degrading violence or sex;

"(b) that the federal government be requested to amend that section of the television broadcasting regulations of the Broadcasting Act dealing with broadcasting in general to provide that 'no station or network operator shall broadcast any program with an undue amount of violence (or sex) or untastefully

presented violence (or sex).'"

I believe that the Canadian Radio-television and Telecommunications Commission did make a statement recently that it was going to strengthen the law. To go on with the motion:

"(c) that the Ontario censor board ensure that all films for public viewing are clearly labelled to warn viewers of the violent content; and

"(d) that the Ontario censor board ensure that excessive violence (and sexually explicit scenes) is removed from films;

"and further that we request the Federation of Canadian Municipalities, the Association of Municipalities of Ontario and all municipalities in Ontario with a population of over 50,000 to endorse this motion."

This motion passed eight to two. It would have been nine to two, but Controller Brown was out of town. So far, we have heard from four municipalities that have endorsed this motion: the city of Kitchener, the region of Peel, the city of Brampton and the borough of East York. Other municipalities have indicated they are studying it and I imagine there will be other endorsements.

I feel that we, as publicly elected officials in all forms of government, have to take strong action against the permissiveness in our society. The slaughter of eight policemen in recent months has caused an outcry for the return of capital punishment. I feel it behooves the TV industry and the movie industry, especially in Hollywood, to clean up their acts.

In the old movies seen on CBC there are tremendous musicals such as those with Fred Astaire and Ginger Rogers. One can see some good movies there; there might be some violence but not the kind of violence you see now. I saw a movie recently starring the late Humphrey Bogart as a crusading newspaper editor and Ethel Barrymore as the publisher. I forget the name of it but it was about 30 years old. That was an excellent movie.

They now are showing all kinds of old movies starring people like Edward G. Robinson and Jimmy Cagney. Why can Hollywood not make these kinds of movies instead of the garbage that portrays murder, violence and sex? Surely there is money to be made from good movies, not bad movies.

I am concerned as a parent, and we should all be concerned as parents, about what effect this is having on teenagers. There have been all kinds of surveys about this recently. One showed that in Texas, a 10-year-old hanged a teenager after seeing a movie. All kinds of violent acts by teenagers have resulted from them seeing violence on the screen.

I commend this government for its strong action, because it is listening to the grass roots of Ontario, and I am here to represent the grass roots at the municipal level. That, in a nutshell, is what I have to say.

Mr. Chairman: Thank you, Alderman Nobleman. We are sorry that you could not be with us a little earlier and that we had to lose a little time with you. We would like to spend more time, but Mr. Williams has a few questions for you.

Mr. Williams: I want to commend Alderman Nobleman for his initiatives in coming before the committee and giving us support from the municipal level.

I have one question of clarification, perhaps two. It is with regard to point (c) in your presentation: "That the Ontario Censor Board ensure that all films for public viewing are clearly labelled to warn viewers of the violent content." Do you mean over and above the basic classification process that we now apply to films and will be applying to videos?

Alderman Nobleman: Our research department helped me with this and this is what they came up with. I know the board is doing its best, but I feel the regulations could be strengthened. A movie may be passed which has some violent content but the majority of the film is passable. It could be so designated, just as on a package of cigarettes now they tell you they are harmful. Our research department felt this was a point that should be made.

Mr. Williams: I believe our deputy commented the other day on the possibility that there could be very brief descriptive material affixed to films along with the label. I think that was the point you were making the other day, deputy. That might give people a little clearer understanding in a very specific way as to how the classification process was arrived at.

Mr. Chairman: Could we get a clarification on that?

Mr. Crosbie: Yes, Mr. Chairman. The labelling we are proposing would not of itself indicate other than the category. The observation I was making was that the theatres branch, when it categorizes films, does provide comments about excessive violence, excessive nudity or whatever they think is the subject matter that would give the film the classification it has where you are restricting it.

This information is available. I was suggesting that it would be desirable to have it available in booklet form for people who are distributing the films.

Mr. Williams: In the shop; not affixed to the individual films, but as added information in the shop.

Mr. Crosbie: Yes; and if anybody wanted to look and see why it had been a restricted movie, for example, he could find out the subject matter and the additional comments.

12:30 p.m.

Alderman Nobleman: I forgot to mention that I disagree with Alan Borovoy, whom I know quite well, about freedom of speech. I believe in freedom of speech as well as the next man, but we have to have laws to protect people. I do not believe there

should be freedom to pollute the screens and the movie houses with garbage.

There has been too much garbage around. It is up to Hollywood to clean up its act. I intend to write to President Ronald Reagan about this. I know he and his wife have made a strong stand against the use of drugs, and I think it is up to President Reagan to take a strong stand with Hollywood to clean up its act.

Mr. Williams: You interrupted my question. On point (c), I understand now what you are driving at. Why would you have limited that broader identification process just to violence and not included explicit sex? Do you think that would not be necessary?

Alderman Nobleman: I guess it could be too. I leave it up to the good people in the censor board to use their experience.

Mr. Williams: But you feel that something in addition to the labelling exercise would have to be implemented. Is that what you are saying?

Alderman Nobleman: It would not hurt. It might help to warn people of what they can expect in a movie.

Mr. Williams: I have only one other question, and maybe it is just a matter of logistics. From your point of view, in seeking support from other municipalities throughout the province, why would you limit your appeal to municipalities of 50,000 and larger?

Alderman Nobleman: I wanted to send it to everybody, but some members of council are concerned about saving postage and all that. We do not have franking privileges.

Mr. Williams: We do not have them.

Alderman Nobleman: One member of council made that amendment. I would like to have sent it to everybody, even municipalities smaller than 50,000, to get the message across. I may do it myself at my own expense, frankly, I feel so strongly about it.

Mr. Williams: One might conclude from this that the problem exists only in the urban areas.

Alderman Nobleman: No. My motion originally was to send it to everybody, but one parsimonious member of council made the amendment to 50,000.

I agree with you, and that is a good point. I am going to ask the clerk to get me a list of municipalities under 50,000. We should communicate with them as well.

Certainly this will go to the next conference of the Association of Municipalities of Ontario in August, where I will be speaking. I am sure it will pass there, where it will have more weight.

The Federation of Canadian Municipalities meets in Regina or Calgary in June, and I will certainly bring it up there; so we will have input at the federal level through the FCM. We have already received a letter from John Crosbie, the Minister of Justice. He is going to study this motion and take it under advisement.

Mr. Williams: Keep it up, Ben.

Mr. Chairman: Thank you for coming, Mr. Nobleman. We are sorry to cut you off a little earlier than usual, but thank you again for coming.

Mr. MacQuarrie: I have one general question of Mr. Crosbie. We have heard various delegations speak of educational immunity or exception, and it leaves me somewhat puzzled. I just wonder what sort of educational value there can be in movies with scenes of violence, torture, sexually explicitness and all the rest of it. You mentioned earlier, Mr. Crosbie, that there were exceptions as far as educational institutions went.

Mr. Crosbie: I was replying to the issue of how we are going to deal with the literally thousands, if not tens of thousands, of films that are out in the marketplace, and I suggested in reply that you could follow the model of the British video recordings legislation.

What they say in their act is, "A video work is, for the purpose of this act, an exempted work if, taken as a whole, it is designed to provide information, education or instruction, or is concerned with sport, religion or music."

Then it qualifies that by saying, "A video work is not an exempted work for those purposes if to any extent it depicts or otherwise deals with human sexual activity or acts of force or restraint associated with such activity, mutilation, torture, or other acts of gross violence, human genital organs or human urinary or excretory functions, or is designed to any extent to stimulate or encourage anything falling within certain other"--

Mr. MacQuarrie: That is the British model.

Mr. Crosbie: That is the British model. One argument that has been raised, and we are well aware of this, is that a great deal of the art video, for instance, has no material of an objectionable type or nature that would result in deletions or censorship or maybe even having it removed from a general category.

Mr. MacQuarrie: There seemed to be a submission by a number of the delegations that there should be a sort of blanket exemption as far as educational films are concerned. I just wondered, not having had the exposure to education some others may have had, how educational some of these films were.

Mr. Chairman: This is very interesting, and I am sure we are going to have an opportunity to discuss this further, but in fairness we do have another witness here. He has been very patient. He is Mr. Millard Roth of the Canadian Motion Picture

Distributors Association. Would you please come to the table and identify yourself and feel free to start your presentation.

CANADIAN MOTION PICTURE DISTRIBUTORS ASSOCIATION

Mr. Roth: Initially I would like to thank you for hearing us today, and particularly I would like to express my thanks to the secretary for his indulgence in seeing that we managed to get on your agenda to express a couple of very specific concerns we have arising from Bill 82.

I am Millard Roth, and I am the executive director of the Canadian Motion Picture Distributors Association and the Home Video Board-Canada. John Bowerbank is the chairman of our board and the vice-president of CBS-Fox Video (Canada) Ltd., a major video studio manufacturer doing business here.

It will probably be useful if I take a moment of your time to describe more specifically whom we represent. We describe our members as video studio manufacturers. Most of them are affiliated with major theatrical motion picture companies, and they account for approximately 80 per cent of the prerecorded videocassette volume generated in this country today. A great majority of the titles they distribute are duplications of theatrical motion pictures which have already been submitted and approved by the Ontario Board of Censors.

I will step back for just a moment and explain to you how the system works. The video studio manufacturer has a licence agreement with a film producer and a responsibility to duplicate, market and distribute that particular title in a specific territory; in this instance, Canada. He will generally negotiate for the duplication with a duplicating lab; and I believe you did hear from Jerry Zaludek on Wednesday. The video studio manufacturer--our member--sells his cassette to a distributor who in turn sells the cassette to a local video retailer from whom you and your family rent the cassette.

As the trade association representing video studio manufacturers, I must say we have had a long-standing and very positive relationship with the Ministry of Consumer and Commercial Relations, with Dr. Elgie and his deputy, Mr. Crosbie, and with the Ontario theatres branch, Mrs. Brown and her staff.

When this legislation was first being considered, we had a number of meetings with the ministry and Mrs. Brown and came to understand their concern that there was no simple means for the consumer to identify the type of product that he or she was renting at a video store. As compared to the situation in theatres, where there is a readily identifiable film classification at the box office and on advertising materials, videocassettes contain no such guidance.

12:40 p.m

At that time, we indicated a degree of understanding for the problem and acknowledged that the most effective way to deal with this problem would be for the ministry or the theatres branch to

supply video retailers with identification labels, in accordance with already established theatrical classifications.

Our understanding of what is being proposed in the regulations to this act is a significantly different approach. We understand the regulations are going to place some significant responsibility and cost on our members and, with your indulgence, that is what I would like to address this morning.

In our view, the regulations do not adequately recognize a number of things. The recognition is lacking not because the problem has not been addressed. However, we are dealing with an emerging industry and there has been a number of significant changes as the industry itself has grown in all countries of the world, including Canada.

In this context, I would like to point out to you and to the committee that at the beginning of last summer the industry initiated its own identification system. The cassette box and the cassette itself are identified with rather informative classifications that should indicate to any consumer the general content and viewing restrictions of a specific title.

These classifications include the following: first, G for general, all ages; second, parental guidance suggested, some material may not be suitable for children; third, PG-13, parents are strongly cautioned to give special guidance for attendance of children under 13, some material may be inappropriate for young children; fourth, R, restricted, under 17 requires accompanying parent or adult guardian; fifth, X, no one under 17 admitted.

It is on this basis that we are proposing to your committee and to the ministry that they give serious consideration to a recommendation from our association that would exempt our members from what we think will be an expensive and confusing process if the regulations are implemented in accordance with our understanding. Cassettes would have to be relabelled with a label incorporating the Ontario classification and including a numbering system and the Ontario government crest.

We understand a lot of this thrust has been made with the view that it would be helpful with regard to both the government's and the industry's antipiracy activities. However, it does present the industry with a number of other problems.

We produce cassettes here in sufficient numbers to service the entire country, not just Ontario. Our member companies consider the volumes they produce to be confidential marketing information, and any prerecorded numbering system would very definitely interfere with the competitive process.

In addition, the companies have already paid for the cost of theatrical classification, and resubmission of the identical product would be, in our view, an unnecessary cost. As I mentioned before, cassettes produced in Ontario are distributed across the country and identification of the Ontario government crest causes unnecessary political problems within these other jurisdictions.

Based upon the discussions we have had with other provinces, designation of the Ontario classifications will also add a degree of confusion to the situation. At the same time, we emphasize that the industry has already taken steps to satisfy the greatest need of the government, which is to make certain the consumer has useful information available to him.

It is our understanding that adult movies account for approximately 20 per cent of a retail store's inventory. Our members do not distribute this type of product. However, we are sensitive to some of the problems the retailer has and definitely concur that if a film has not been classified for theatrical exhibition, the facilities to submit it to the board for classification serve a variety of useful purposes.

We agree that any video titles our member companies have that fall into this category should be submitted for classification, but we must emphasize that any regulation calling for prenumbering or Ontario government identification should be eliminated for the reasons I have indicated.

I mentioned before that video is a new and evolving industry. As an example, five years ago the volume done by our member companies was negligible. For 1984, we are expecting volume at wholesale in Canada will approximate \$100 million. That is rather extraordinary growth, particularly in these economic times.

We feel our industry has proven its responsibility over many years of working with the Ontario Board of Censors and other censor boards across the country. It is our intention to continue to do so. At the same time, we request that we be treated fairly and in a manner that will take into consideration some of the extraordinary logistical problems the industry faces.

We thank you for your consideration. Mr. Bowerbank and I will be pleased to answer any questions the committee may have.

Mr. Allen: You appear to have seen the regulations. Is that true?

Mr. Roth: No, we have not seen any regulations. We have had some discussions with the ministry in general terms as to how the system might be applied once the act comes into force.

Mr. Allen: None the less, you seem to be a small step ahead of some of us on the committee with regard to what you know about it.

You are very much involved in the distribution and are familiar with the retailing of the video and film material we are talking about. Can you give us some idea of your estimate of the proportion of the material handled by all the agencies you are in touch with that could be described as kiddie porn, child pornography or films containing sex associated with extreme violence?

Mr. Bowerbank: I am a manufacturer so I get into the trade frequently with distributors and dealers. From observation,

I would say extreme violence is less than five per cent.

Mr. Allen: What about extreme violence associated with sex?

Mr. Bowerbank: That is an under-the-counter type of product; people are aware it is illegal. I think it is much less than five per cent. It depends on one's idea of extreme violence. Some tapes are positively revolting and in my observation are kept strictly under the counter in the back of the shop.

Mr. Allen: Those are the films we are usually shown in the out-takes. It is obviously useful to have some sense of the proportion of what we are dealing with and how extensive it is.

What about child pornography?

Mr. Bowerbank: I have not seen any examples myself. I am sure they exist but I have not personally seen any.

Mr. Allen: That whole area to the extent that it is a problem would not be regulated by the application of any regulations to you people.

Mr. Bowerbank: These are tapes that are brought over the border from other countries and distributed privately.

Mr. Allen: There are other ways of getting a handle on that.

Mr. Williams: You used the words "extreme violence" and gave a percentage figure. If you were to use the words "excessive violence," what would the percentage figure be?

12:50 p.m.

Mr. Bowerbank: Where do you draw the line? My interpretation of excessive violence is perhaps different from someone else's. Personally, I would classify about 10 per cent of the movies around as being excessively violent. I stopped one of my own movies from distribution last month because I felt the opening scene was excessively violent. Before I put it out on the marketplace, Mary Brown gets to review it.

Mr. Allen: I would ask you, if I could, to perhaps be reflective for a moment. Do your own concerns arise principally or only out of the need for regulation, providing for some sort of rational processes as regards the handling of a business operation? How much concern do you have for the issues of free expression and exchange of ideas, considering the fact that film is, after all, a crystallized idea, a visual idea of some kind?

Do those other considerations enter into the picture for you, and do they become a problem for you in some respects, meeting the demands of the marketplace and the community?

Mr. Roth: I can best express my understanding of the system by saying that our members obviously have a responsibility

to represent the director of a picture, who is the prime focus of the creative effort. Their responsibility goes so far as to make sure that he has the maximum opportunity available to him in that expression.

At the same time, we view ourselves very much as part of the corporate system. We would like to believe that we do maintain a balance, in our practices and our relationships, between what might be considered excessive creative effort and the demands of the community.

Mr. Allen: I would like to know if you yourselves believe that your purposes would be adequately served by a film review process which provided you with classification, with an opportunity to test against a panel that is representative and has some experience in the field, just where particular films lie with respect to potential prosecution under the Criminal Code or an act such as the Broadcasting Act.

Such a process would, none the less, after that judgement, leave you free to take your chances with prosecution, rather than simply closing off that option by offering you no appeal beyond the process outlined in this act.

Mr. Roth: From the theatrical point of view, basically we have worked rather well within that framework up to now. I do not see any reason anything that this bill is proposing within that context should change for us.

We have, as I said before, a much greater concern for some of the specific logistical problems that we are faced with because of the inherent characteristics of video. I have to differentiate between video at the retail level and theatrical motion pictures in a movie house.

Mr. Allen: You cannot imagine a case in which your commitment to a director, producer or artist, which lies behind the production, might put you in a situation where you would want to dispute legally the judgements of the film review board and its panels, and hazard your chances in court in a particular instance?

Mr. Bowerbank: I can answer that. As a manufacturer, I have no objections whatsoever to the classification of any movie that we produce.

Mr. Allen: Classification, sure. That is fine. What about the next step?

Mr. Bowerbank: It is very difficult to say whether I would want to challenge in court the viability of someone's decision on the acceptability of a movie. I doubt that I would go that far, quite frankly. I am speaking only for my company, CBS-Fox Video (Canada) Ltd. I do not know how the others would react.

Mr. Chairman: I just want to remind the committee members that we have five minutes left and two speakers.

Mr. Spensieri: Very briefly, you mentioned that the product already classified for theatrical purposes is usually manufactured in Ontario for Canada-wide distribution. Do you not think some kind of dual labelling, both for theatrical purposes and for the purposes of this act, would eventually lead to the kind of uniformity across the provinces that may be desirable?

Previous speakers who have appeared before us have urged us to consider a universal code for review and censorship, if you like, across the provinces. Is this not going to lead to that? Is there some practical impediment to having the provincial logo and labelling if we go Canada-wide? Is that a problem.

Mr. Bowerbank: As I stated before, as manufacturers we have no problem with labelling; we can label anything you want. Our problem is with the label designating it as from Ontario. We have distributors across the country. We ship to basically 12, who have about 30 or 40 branches. It is impossible to manufacture labels for Ontario and to keep them within this province because the distributors trans-ship them.

Mr. Spensieri: I am suggesting quite the contrary, that the Ontario label travel Canada-wide.

Mr. Roth: I wish I could say that anything that has happened in this country in a historical sense outside the area of securities would support the thesis that an initiative taken in Ontario would result in other provinces following that lead, regardless of how positive it might be, as initiated within this particular jurisdiction.

There seems to be a desire by other provinces, and I would include Ontario, to develop a sense of unique authorship when it comes to a lot of systems when equally good systems are available from other areas that could be very simply applied. I do not think this will be done. If I had confidence that it would be, I guess a lot of the concerns I have expressed to you would really be allayed, but I do not believe, from my reading of my visits with Mr. Crosbie's counterparts in other provinces, that it is going to take place.

Mr. MacQuarrie: Mr. Roth, if I understood you correctly, you spoke of logistics problems and also of problems with labelling and numbering. In view of this interprovincial sort of operation, I can understand that there are some difficulties.

Yesterday we had a witness representing the police who strongly suggested that in view of the ease of copying and bootlegging tapes and all the rest of it, the only real, effective means of control would be to give an approved producer, shall we say, a label, to approve the number of copies of the particular tape and to number each tape individually so that when a person goes into a video store he sees the label and the number and knows he is getting what the tape says he is getting, not something that has possibly been re-recorded over a tape or whatever.

Mr. Roth: If you pursued that avenue I think the same policeman, or certainly some of his confrères, would be

sufficiently knowledgeable to tell you that today if somebody wants to duplicate a tape, he will duplicate the tape, the label and the box, and it will be of sufficient quality that all of us in this room, including your witness, would be hard pressed to differentiate between that and the original.

Mr. MacQuarrie: I certainly saw merit in his argument; I still see some merit in the argument. I realize there are certainly opportunities to counterfeit and copy.

Mr. Roth: Unfortunately. We are spending a lot of money working with the police to try to put a stop on that kind of activity, and it is getting very difficult.

Mr. Bowerbank: If you could make such a system work, then it probably would be welcomed by the manufacturers, because bootlegging is our major problem.

Mr. MacQuarrie: Then let us work on a system.

Mr. Chairman: Thank you both, gentlemen, for being here with us. We enjoyed having you here. Before the committee leaves, I want to thank the committee for being so co-operative during the last few days. I want to thank the minister, Mr. Crosbie and his staff for being here to help us out.

Shall the bill be reported to the House without amendment?

Bill ordered to be reported.

The committee adjourned at 1 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
METROPOLITAN TORONTO POLICE FORCE COMPLAINTS ACT
WEDNESDAY, DECEMBER 12, 1984

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Kolyn, A. (Lakeshore PC)
VICE-CHAIRMAN: MacQuarrie, R. W. (Carleton East PC)
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Spensieri, M. A. (Yorkview L)
Stevenson, K. R. (Durham-York PC)
Swart, M. L. (Welland-Thorold NDP)
Williams, J. R. (Oriole PC)

Also taking part:

McMurtry, Hon. R. R., Attorney General (Eglinton PC)

Clerk: Carrozza, F.

From the Ministry of the Attormey General:

Linden, S. B., Public Complaints Commissioner

Witnesses:

Borovoy, A., General Counsel, Canadian Civil Liberties Union

Levy, E., President, Criminal Lawyers' Association

Wainberg, M., President, Citizens' Independent Review of Police
Activities

Reville, D., Alderman, Ward 7, City of Toronto

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, December 12, 1984

The committee met at 9:42 a.m. in room 151.

BILL 140, AN ACT TO REVISE THE METROPOLITAN POLICE
FORCE COMPLAINTS PROJECT ACT, 1981

Consideration of Bill 140, An Act to revise the Metropolitan Police Force Complaints Project Act, 1981.

Mr. Chairman: Good morning, ladies and gentlemen. We are here today to deal with Bill 140, referred to our committee on December 7, 1984. We will begin by hearing depositions. Prior to starting, I would certainly like to acknowledge our former colleague, the opposition critic of the Liberal Party, Mr. Breithaupt, who is here.

Mr. Breithaupt is the current chairman of the Ontario Law Reform Commission and has brought two guests, Dr. D. P. Makanza, the Attorney General of Swaziland, and Mr. T. Masina, the director of public prosecutions and secretary of the Swazi Law Review Commission. Gentlemen, welcome to Canada, welcome to Ontario and welcome to the Ontario Legislature.

Our first witnesses are from the Canadian Civil Liberties Association; Mr. Alan Borovoy, general counsel. Would you please identify yourselves for the record.

CANADIAN CIVIL LIBERTIES ASSOCIATION

Mr. Borovoy: Mr. Chairman, I am Alan Borovoy, the general counsel of the Canadian Civil Liberties Association. With me is Erika Abner, our research director.

Thank you for the opportunity of appearing here once more. I am beginning to feel like a bit of a fixture before this committee.

To begin with, I will make a comment on the last three years. While our organization has not had the opportunity to scrutinize in detail the operations of the office of the public complaints commissioner, we are prepared to say that it represents a significant improvement over the status quo ante.

I do not want that to sound ungracious. I am saying this not only because the status quo ante was so bad--and it was--but also because of the many welcome initiatives that have been taken by the public complaints commissioner during the last three years.

However, the system contains a number of serious flaws; it did from the outset. A number of them are perpetuated in this bill and it is our respectful view that this is the time to make the corrections, as this bill may well become law in this province for a number of years to come.

The first and the most important of the flaws, in our view,

is one to which we have addressed ourselves before and, for that matter, so have a number of others. It is the system of providing that the initial investigations are to be conducted essentially by members of the very police force which has been impugned, by colleagues of the officer whose conduct has been impugned.

In our view, that remains a key flaw in the system and our position on this is reinforced by the experience of the last three years. In the first place, one of the most crucial experiences in this respect is the situation that occurred in Scarborough several months ago. There was a rowdy party, some 53 officers finally attended and in the outcome there was what was described in the press as "a near riot," with numbers of police officers committing assaults, kicking, waving and striking people with their batons. All of this was reported by the press and captured to some extent on videotape.

The difficulty with the whole thing, and that to which I would especially like to draw your attention, is the fact that though there were 53 officers there and each of them was called to testify by the public complaints commissioner, not one officer who had engaged in what was described as an assault was ever identified. Apparently, they had removed their badges, their identifying insignia, their caps and the numbers they carry. They could not be identified and none of the police officers was able to identify which of the officers was involved, even after looking at the film.

Former Metropolitan Toronto police chief Ackroyd said of the officers, "They do not want to get their brother officers into any kind of difficulty."

There have been a number of other incidents where the credibility of police witnesses has been put very much at issue. The police complaints board, in rendering a decision last August, described or expressed what it called "serious concerns about the reliability of evidence of police witnesses."

At a trial last February county court judge H. M. O'Connell said he did not believe what was said about evidence given by a police constable. County court judge Wren, in another case about a year ago, said, "Certain evidence given by police officers under oath was less than frank; it was indeed false."

The Court of Appeal referred to material which "obviously reflected adversely on the credibility" of a Metro police sergeant.

I do not cite these examples in order to paint a terrible picture of the Metro Toronto police force. By and large it is one of the better forces that we know of.

I do not cite this in order to suggest that had the public complaints commissioner investigated from square one he necessarily would have got to the bottom of it, because in the Scarborough incident he was essentially in the investigation from the beginning and it did not help.

9:50 a.m.

Neither do I cite this even to comment on the morality of those police officers at issue. I cite it to make a rather modest point. The experience of the last three years suggests that to whatever extent police officers have an opportunity to cover up the misdeeds of their fellow officers, at the very least they will be perceived by the public as doing just that. To the extent the investigations provide they are to be done by the police themselves, then to that extent they have the opportunity to cover up the misdeeds of their fellow officers.

To put it very simply, the situation is that when police investigate fellow officers, they have a conflict of interest. On the one hand, their duty is to scrupulously and objectively dig out all the evidence there is. On the other hand, they have an interest in protecting their fellow officers and the good name of the department. In consequence, no matter how fair an investigation may be, it is not going to appear fair so long as people with interests of that kind are involved in the investigation.

While there is no question the situation has been improved to the extent that investigation is subject to monitoring by an agency independent of the police force, nevertheless it remains a situation that has to undermine public confidence in the arrangement because during the course of the initial investigation there can be misdeeds committed and the public is therefore likely to perceive it that way no matter what happens.

There is another problem with requiring the initial investigations to be done by the police themselves. This is one problem that unfortunately, has not been subject to assessment by the experience that has taken place. It is the fact that there are undoubtedly numbers of people in our community who will not file complaints because these arrangements undermine their confidence in the system.

I am not simply suggesting a situation where they will not come forward because they do not want to be interviewed by police officers. I recognize that Mr. Linden has taken some commendable initiatives. In numbers of cases, his office has investigated complainants and some of their witnesses while the police have investigated others. I am suggesting some people will not come forward at all because they do not have sufficient confidence in a system where so much of the initial investigation is done by other police officers, by people who have an interest in making it come out good.

I appreciate there may be much in the reports that have issued from the public complaints commissioner's office that might to some extent counterbalance that. Perhaps some of it does. But for everything that comes out that counterbalances it, there are other things to help restore the imbalance.

It may be pointed out that there have been a number of hearings and in a number of cases the PCC has been quite vigorous in the investigations. Counterbalancing that, someone looking at the figures might say, "Yes, and in one of those cases the police

officer was docked only two weeks' pay." They may also point out only a fraction of the several hundreds of complaints ever get that far.

I do not say these things because I am necessarily drawing any adverse inferences from those statistics. I say these things because the statistics are capable of being interpreted in many different ways. I am suggesting that people who have unpleasant encounters with the police are likely to be cynical at worst and afraid at best. It is, therefore, very important that we do what we can to create an appropriate level of confidence in the operation. I suggest that is not going to be done while the greatest number of complaints are subject to investigation by colleagues of the very officer or officers who are under attack.

In this respect, it is important also to recognize that when we did have some measure--I know our organization conducted a number of surveys among accused people who were coming up in the courts. We took from them reports of their allegations of misconduct committed by the police. We did this a number of times during the 1970s. The overwhelming number of people who complained of police misconduct refused to file complaints. I am talking about the period before the last three years. Invariably, the overwhelming number refused. When we asked why, they said it would do no good. That kind of cynicism often characterizes the response of those who run into difficulty.

It is very interesting also that in the few cases where there has been a high profile for some allegations of police misconduct, they have provided that the investigation be done by outsiders. In the Morand commission on police misconduct in Toronto, the investigations were conducted by outsiders. In the McDonald commission on Royal Canadian Mounted Police wrongdoings, the investigations were done by outsiders. When Albert Johnson was killed a few years ago, that so inflamed the black community that the investigation was done by outsiders. It was done by the Ontario Provincial Police instead of the Metropolitan Toronto Police.

On the basis of all this, our first recommendation is that the bill ought to provide that the public complaints commissioner do the greatest number of investigations rather than the other way around. As you know, lawyers often argue the alternative. To whatever extent you may not be happy with this recommendation, and I suggest you would be in error if you are not, as I respectfully make that suggestion, I submit that at the very least the conditions of early PCC involvement be changed under the act.

Under the existing act and under the bill, the provision is that the PCC may become involved earlier in an investigation, that is before the 30 days or before the first interim report, if there are what the bill describes as "undue delay or other exceptional circumstances in the conduct of an investigation."

10 a.m.

Our experience of the last three years suggests to us that this is not an adequate provision for the admittedly few

investigations in which you might wish to have the PCC involved. In this regard, I refer you to a case. The name of the complainant escapes me at the moment, but it was made public.

This man alleged that the police played Russian roulette with him and in one case put a gun in his mouth. What happened is that the public complaints commissioner got into that investigation early, went down to the police station, sealed off some rooms and seized the guns that were supposed to have been involved. The significant thing about this is that he got into it early because, according to the press, the chief of police approved his early involvement.

But suppose for a moment that the current incumbent is no longer the incumbent and that someone else is in the job; suppose that we have a different chief of police from the one we had then, as we already do. Under the terms of the act and the terms of the bill before you, if the chief of police does not want him involved he may well not be able to get involved at that level.

In other words, the very important initiative taken by the PCC at that time may not be able to go forward because the investigation has not begun and because the clause permitting earlier involvement appears to contemplate an ongoing police investigation, which he is entitled to take over under extraordinary circumstances.

As a consequence of this we would submit at the very least that the conditions of early involvement for the PCC be substantially changed to allow much greater leeway in his office to get involved earlier, even if the police may not wish it.

I go on from this rather central difficulty with the bill to cite a number of others, some of which have changed in your bill and some of which persist.

First of all a change: I note that the powers of the board of inquiry that ultimately has the power to discipline police officers are going to be changed to eliminate much of the suspension power that exists under the current act. As a consequence it would appear that, apart from demotions, which could hardly apply to the lower-level officers in any event, the only discipline apparently available is either discharge on the one hand or five days' suspension on the other hand.

I know it also talks about docking days off, but if we are talking about the suspension power, which is the most important, I have to choose between five days and a discharge.

This amounts to a choice between the employment guillotine and a hard slap on the wrist, and I would submit that much of the power to impose intelligent discipline involves a range of choices in between. Indeed, one has only to look at the experience of labour arbitrators to understand how valuable the power to impose substantial suspensions has been in avoiding the discharge at worst or doing virtually nothing at best--I will put it the other way around. As a result of that, we would suggest that the power to impose a substantial suspension be restored.

I see in the notes accompanying the bill that this is somehow designed to bring it in line with the powers under the Police Act. With great respect, I would suggest that the process be reversed. The powers under the Police Act should be brought into line with the kind of powers that exist under the current act.

To go through a number of the other sections of the bill--and I will try to take this as much in chronological order as my memory enables me to do--it says early on that the person in charge of the police complaints bureau gets a complaint, he must notify the officer complained of and tell him about the subject matter of the complaint. Then it says that the person operating the complaints bureau may decide not to inform the subject officer--I think they call it the subject officer--if, in his view, informing the officer might undermine the effectiveness of an investigation.

I would suggest that since the public complaints commissioner is also concerned with the integrity of investigations, and does have a role to play from time to time, even under the worst version of this bill, in the early investigations, he should also have the opportunity to determine whether the subject officer should be notified.

The bill also provides that during the course of an investigation conducted by the PCC, he has certain powers to go into the police station and conduct his investigation there, but it says that these arise after notifying the chief. In our view, this strikes us as a rather unwarranted exception to the general provisions of the law that if someone is under investigation, you do not necessarily tell him before you are going to drop in on him for a visit.

Indeed, suppose the chief himself were the one under investigation. To what extent, for example, does the law require anybody to tell a civilian who is under investigation in advance of a visit? The law does not oblige it there, nor do we think it should oblige it where the police are the ones under investigation.

Mr. Philip: What section are you talking about?

Mr. Borovoy: I will find that for you in a moment. If you could find it, I would appreciate it. My memory is only so good, Mr. Philip.

Mr. Philip: That is the first time I have ever caught you.

Mr. Borovoy: I hope it will be the last.

There is another provision in the bill which says that to whatever extent a police officer is required to respond to a civilian complaint--in the investigations, I suppose, conducted by his superiors or by the PCC--the answer he gives is not admissible at a hearing of a board of inquiry without his consent. I would suggest to you that this is a provision which has no place in a bill of this kind.

Indeed, it is rather unique to police officers. Suppose an auto worker--they are very much in the news these days--was required by his employer, under pain of employment discipline, to explain his version of something that happened in the plant. There is no law I know of that would render his reply inadmissible at an arbitration into a discipline or discharge grievance. On that basis, I would suggest, with respect, that a police officer should not be entitled to that immunity either, when what is involved is employment discipline.

In view of the fact that police officers are particularly susceptible to allegations of a criminal nature, there may be an argument for rendering those replies inadmissible for criminal purposes in the event that they are charged with an offence. To that extent, I think it would be wise to seek amendments to the federal criminal law so as to immunize those replies in the context of a criminal trial. However, there is no basis to immunize them in the context of employment discipline.

10:10 a.m.

The act also provides, and the bill now provides, that a third of the members of the boards of inquiry that will render these important adjudications be chosen jointly by the Metropolitan Board of Commissioners of Police and the Metropolitan Toronto Police Association.

In our view, that represents treatment that is not even-handed and is unwarranted. The police interest before a board of inquiry is an implicated interest. There is no suggestion anywhere that the aggrieved interests will have a similar opportunity to nominate members of the board of inquiry. The minority groups have not been asked to nominate members; at least they have no statutory right to do so. The complainants have no such right. On that basis, we suggest this special right of the Metro police be eliminated.

I can appreciate wanting to have people who have police experience on those boards of inquiry, but I suggest this is no place to require there be people who have police loyalties on a board of inquiry.

Mr. Chairman: We have allotted a certain amount of time. Would you please try to wrap it up? I am sure the Attorney General (Mr. McMurtry) would like to make a few comments.

Mr. Borovoy: I always like to rush to accommodate my Attorney General, as there is a right of reply.

Two more occur to me. There is a requirement in the bill that there be proof beyond a reasonable doubt before employment discipline of this kind can be imposed. I appreciate that police officers, like everyone else, should be entitled to that high standard of proof if incarceration or criminal penalties might flow. However, I see no reason why police officers, among all other people in our society, should be afforded that unique solicitude where employment discipline is involved. No one else is

entitled to that highest standard of proof; neither should police officers.

The final comment I wish to make is something we have said a number of times. In our view, a number of the problems that exacerbate relations between the police and everyone else grow out of the unfortunate working conditions to which the police are subjected where their internal complaints and grievances are involved. There is a failure to provide for independent adjudication, a failure to provide for them for protections of the kind industrial employees have when they are required to answer questions that arise during the course of their employment.

This is respectfully submitted and I await the opportunity I hope I will have to respond to the Attorney General.

Mr. Chairman: Before we get to the Attorney General, I want to remind the committee members that we started a few minutes late and we are half an hour into the program. I have requests from Mr. Mitchell and Mr. Philip, and I think we should have a comment from the Attorney General.

Mr. Mitchell: Mr. Borovoy, the issue of initial investigations within the force formed a good part of our discussions when we dealt with the original bill.

I might be so bold as to suggest that, when we are dealing with an organization that is so involved with the public, I might have some small measure of concern similar to yours. However, why do you see this differently to your own profession or of the medical profession, which are self-governing, etc.?

Mr. Borovoy: A number of years ago I remember being on a panel with Sydney Brown, then president of the Metro police association, when he brought up that point. I said to him at the time: "I tell you what. I promise to try to change the rules of the Law Society of Upper Canada and some of the self-governing professions if you promise to come with me to try to change the rules with respect to police officers."

I might say to you that he fulfilled his end of it and he did it. I have not yet done it, but I would be prepared to do it.

I have always had some difficulty with the self-governing professions, but I would suggest there is an important distinction to be drawn. While the self-governing professions do investigate themselves for a number of professional purposes, there is a point at which they become susceptible to police investigations where certain things are suspected. The police may be the only ones in our society that are not regularly subject to investigation from the outside.

Mr. Mitchell: Would you not see the police commission--not only the local police commission but also the Ontario Police Commission--not really in a sense keeping under constant observation those very forces, but particularly the one we are dealing with here, the Metropolitan Toronto Police?

Mr. Borovoy: When the conflict is between a member of the public and a police force, I would submit the very functions of the Ontario Police Commission deprive it of that appearance of impartiality because the Ontario Police Commission is, to a very great extent, a management consultant.

Let me put it this way: the subject matter of a good number of complaints may involve practices they have approved, or they might even have encouraged. As a result, it deprives them of that appearance of independence and objectivity.

I remember suggesting at one time when it came up in a labour relations context that it might be a little like saying that if a United Auto Workers person has a conflict with General Workers, we would ask the chamber of commerce to resolve it.

Mr. Philip: There are so many questions I could ask you but I would like to zero in on the whole problem of discipline when someone is found guilty.

This act, as you pointed out, makes itself consistent with the Police Act. The problem arises, and I gave the example in the Legislature on second reading, where we have someone like Robert Messacar, who was found guilty on two counts of assault by a civil court, and yet is still on the police force.

I am wondering if you would agree that if the government insists on a comprehensive definition of misconduct, a finding of liability against the police officer in a civil court for assault and battery, false arrest, false imprisonment or malicious prosecution should be added to that definition to cover cases such as the Messacar case where a police officer is found guilty of assault in the performance of his duty but is found guilty under a civil action rather than under a criminal action.

Mr. Borovoy: I am sympathetic with that. This may take a little bit of sorting out. The difficulty may be the extent to which, for employment discipline purposes, you are talking about different standards of proof and different rules concerning the admissibility of evidence. I think, therefore, it may require some sorting out of the competing standards before I could say to you that it ought to be automatic.

Certainly it ought to be considered weighty evidence. I am not sure it ought to flow automatically but, as I said, I would like to think about that. In any event, I think it may require some sorting out among the various standards and rules that have to be satisfied before conclusions are reached in each of the two proceedings.

10:20 a.m.

Mr. Philip: You mentioned a particular example with which we are all familiar. I am wondering what we do with the case of collective misconduct. There is nothing under the Police Act that really helps us deal with that.

I am wondering if the best way of dealing with this is by

way of reverse onus, similar to section 193 of the Criminal Code where, for example, a person who is found in a common bawdy house without lawful excuse is guilty of an offence punishable by summary conviction.

Is that compatible then? How do we deal with that under the Police Act list of offences? How do you punish collective action in a case where you have a group of police officers, such as in the case which you have just mentioned, the Scarborough case?

Mr. Borovoy: I would have a lot of difficulty reversing the onus of proof where you are proceeding against people in such serious ways as depriving them of their livelihood. Indeed, there are provisions in the Criminal Code and other federal penal statutes that bother us and we have been involved in protesting some of the reverse onuses that exist in these statutes.

I would have difficulty about formally reversing the onus of proof. However, there may be situations where logical inferences can be drawn. I am not necessarily referring to the Scarborough situation when I say this, but there may be situations where logical inferences might be drawn and, if a person is silent in the face of allegations that could give rise to logical inferences, it may well be that such inferences could be drawn adverse to that person's interest. That is a little different from formally shifting the onus of proof.

The onus of proof sometimes can be shifted in cases where you know very well that X has the information. Sometimes we do that in labour relation situations, for example. We say that if an employer fires someone during a union organizing campaign there is an argument that, since he knows why he fires him, he has to say so, otherwise the circumstances are too suspicious. You cannot prove what he had in his mind and, in those situations, there is a very strong argument for formally reversing the onus.

I am not sure it would apply here, though I would like to think about it further.

Hon. Mr. McMurtry: I would like personally to welcome counsel to the Canadian Civil Liberties Association, once again, to these important deliberations of our standing committee on justice. Mr. Borovoy has made many important contributions to the deliberations of this committee over the years and I welcome him here once again. There are a number of important issues he has raised and I will try to deal with them relatively quickly, although I appreciate that they do merit a good deal of discussion.

We have had, of course, as Mr. Borovoy has pointed out, some of these discussions before and I recognize that there is a difference of opinion between Mr. Borovoy and myself in relation to some of the basic philosophy and underlying principles of the legislation, although we both agree, obviously, on the goal or goals for the legislation, and that is the best possible relationship between the public and the police department that serves the public.

We both agree on the principles, I am sure, of responsibility and accountability on the part of the police. We

have some modest disagreement, it would appear, about how we best achieve those principles of responsibility and accountability, and this is an issue about which reasonable people can and will disagree.

We believe, as we indicated when we introduced this legislation--and, quite frankly, the experience of almost three years with the project has confirmed our belief--in the wisdom of giving the police the responsibility and accountability in the initial investigation. I repeat that we believe this is one of the strengths of the legislation, and if this responsibility were taken away from the police, in our view there would be a wedge between the police and the community in the handling of these complaints.

We have had lengthy discussions over the years about the experience in some other jurisdictions where independent civilian investigation has commenced at the outset and about the difficulty that independent civilian investigators have had in penetrating what often is a wall created between the police department and the independent investigators.

We believe that the likelihood of obtaining the truth is much greater in the initial police investigation if the police know that this investigation may well be redone independently and that if the initial investigation is inadequate, the independent civilian investigation may well reveal this fact, much to the embarrassment of the police who are initially responsible. But that is, again, a difference of opinion concerning how best to achieve the same goals of responsibility and accountability.

I appreciate what Mr. Borovoy says about the importance of the perception as well as the reality, and I think that is an important consideration. The possible perception of a coverup obviously always has to be worrisome. But drawing on better than 25 years of experience with police forces, particularly the Metropolitan Toronto Police Force, as an assistant crown attorney, as a defence counsel for many years and as Attorney General and Solicitor General, I feel very strongly that the greater likelihood of discovering the truth in any of these situations is through giving the police force the responsibility and accountability for the investigation at the outset.

10:30 a.m.

I might say in this context that many police officers in the Metropolitan Toronto Police Department would quite frankly prefer to see this responsibility given over to an independent investigation team for the wrong reasons, because they are well aware that the level of their own accountability will not be as great as it would be if they had to be accountable to their own senior officers in the first instance.

Mr. Elston: What about the position of the individuals who carry out the police investigation themselves? I understand that it is not a particularly nice squad to be a member of of.

Mr. Chairman: Thank you, Mr. Elston. Please continue, Minister.

Hon. Mr. McMurtry: The impact of the legislation in this respect has been quite considerable. I do appreciate that Mr. Borovoy has referred to the significant improvement as a result of this legislation.

Of great importance in the context of the police carrying out the initial investigation is the informal resolution of complaints, by police and by individual citizens--which makes up approximately 30 per cent of all of these complaints. Again, a very important aspect of the legislation is that it does encourage the informal resolution of complaints made by citizens. This, of course, is of crucial importance in order to maintain the confidence of the community and the positive relationship that must exist between the community and police who serve them.

The police chief himself, since the institution of this legislation, now deals in a disciplinary manner with approximately six times the number of cases that were dealt with prior to this pilot project. In other words, the number of cases in which the police chief institutes disciplinary proceedings has increased by six times in the post-pilot project period, as compared to the pre-pilot project period. I think this is another indication of the relative success of this project.

I would like to ask Mr. Linden to address the issue that was raised--a very important investigation. There can be no doubt that there are very significant public concerns raised, understandably, in relation to the Morrish Road incident. It is my own view that it would not have made any difference if the police had carried out the initial investigation.

I will try to sum up fairly quickly, and ask Mr. Linden to comment on that and any other of these issues in a moment. Mr. Borovoy has raised a number of important issues that we would like to address, even if we are a little bit over our time. Mr. Linden may also wish to speak about the outreach programs he is engaged in, which I think have done a great deal to increase the level of confidence in the community with respect to the process.

When we created this legislation, and prepared some amendments to the existing legislation--it is important to recognize that, in many respects, this legislation does represent a consensus that was achieved between the government and the police community. There must be a high level of confidence in the legislation for it to work.

For us to impose legislative changes on the police community over the very significant opposition of the police community would, in my respectful view, impair in a very fundamental way the effectiveness of this legislation because of the paramount importance of maintaining the confidence of police management and the police association.

It is quite obvious that police management and police associations do not often speak with one voice. They sometimes

have conflicting views or competing goals, and the fact that Mr. Linden in particular has been able to achieve this remarkably high degree of consensus on behalf of all of the community speaks, I think--and I know Mr. Borovoy would be the first to agree--very highly of his personal skills as a negotiator.

That does address some of the issues in relation to consistency with the Police Act and the notification of the chief of police in relation to certain investigations. In the context of a statement to the senior police officer not being admissible against him in subsequent proceedings, again a police officer does not have the luxury of the average citizen of remaining silent or he will be in breach of the Police Act.

I was a little curious about the fact that Mr. Borovoy would make the comparison in this context with a labour arbitration and yet suggest that police representation on the board that is hearing a complaint, which would be quite compatible with a labour arbitration, is inappropriate. I do not think Mr. Borovoy, with respect, can have it both ways.

Mr. Borovoy: You do not mean that.

Hon. Mr. McMurtry: Perhaps I misunderstood you.

Mr. Borovoy: If I may just interrupt you for half a second, in labour arbitration management and labour are on the board. Here you have only the police interest; the aggrieved interests are not represented on the board here the way they are in the labour situation.

Hon. Mr. McMurtry: I do not agree with that. When you look at the people who are chairing these boards, they are excellent representatives of the public interest and surely they are in a position to represent the aggrieved party.

Mr. Borovoy: I am talking about the party nominees. I am saying that in the labour situation you have the impartial chairman, the management representative and the union representative. Here you have the impartial chairman, the police representative and the other side is--

Hon. Mr. McMurtry: Public representation.

Mr. Borovoy: But they are not particularly the representatives of the aggrieved interests, as you have in the union situation. All I said is that if you are not going to have them, and I understand the difficulty in having them, then do not have the police interest represented.

Hon. Mr. McMurtry: Two out of three are representing the public interest and thereby certainly representing the aggrieved party's interest.

In any event, because of the time restrictions--

Mr. Chairman: I will allow Mr. Linden a few comments before we move on.

Mr. Borovoy: I just have to object when my analogies are--

Mr. Chairman: It is on the record, Mr. Borovoy. Thank you.

Mr. Linden: Mr. Chairman, I will be very brief on this. It is a bit unusual for me to be sitting opposite Mr. Borovoy on this issue. As you know and as he obviously knows, in the past whenever we have appeared before committees of this sort, we have sat side by side and shoulder by shoulder.

Mr. Cureatz: It is nice that you are taking the flak for a change. Welcome to the real world.

Mr. Borovoy: I might say I am happy to give it to him.

Mr. Cureatz: Good.

10:40 a.m.

Mr. Linden: I am curious to have heard Mr. Borovoy single out the Morrish Road incident as an example of the importance of earlier intervention by the office of the public complaints commissioner. Surely in that case it would have made no difference whatsoever whenever, and Mr. Borovoy himself said that, so I do not see how that particular example is of any value in supporting his argument.

In the other examples, which Mr. Borovoy has used over and over again, the examples of the royal commissions--the Morand and McDonald royal commissions--where civilian investigators were used, they were used in precisely the same way as our investigators are used now. Those investigators did not become involved until months after the incidents occurred. Indeed, in each of those cases, police investigations preceded any involvement by either Mr. Justice Morand's or Mr. Justice McDonald's investigators.

I have to say Mr. Borovoy also referred to a number of studies conducted by the Canadian Civil Liberties Association in the 1970s; once again, that has a very familiar ring. I believe I was the author of those.

Mr. Borovoy: You should be over here.

Mr. Linden: I initiated, organized and carried them out on behalf of the Canadian Civil Liberties Association. I could not agree more that we should make an effort to outreach and make people in the community understand how the system works and try to break down that perception about which Mr. Borovoy and I are very concerned. We have done just that during the last three years. I could give you many examples, but it would take me some time.

I can say there is hardly a community in Metropolitan Toronto we have not reached. We have taken the initiative, gone out and spoken to all of them, informed them about the system and how it works and tried to encourage them not to be reluctant to

come forward. Certainly the job is not over but we have gone a long way in three years. I do not know what else I could say now.

Mr. Chairman: Thank you, Mr. Linden. Minister, you wanted to say goodbye.

Hon. Mr. McMurtry: I would suggest with respect to Mr. Borovoy--and he may not agree with me, as we obviously have some areas of disagreement--but really is this not the most progressive legislation in the western world in relation to handling the citizens' complaints against the police?

Mr. Borovoy: Is that a question?

Hon. Mr. McMurtry: Yes.

Mr. Borovoy: It is more progressive than what is in effect in many other places. When I recently looked at the Manitoba legislation, I saw some distinct advantages in the legislation they have enacted.

Hon. Mr. McMurtry: It is not in force, is it, in Manitoba?

Mr. Borovoy: I understand they have not yet established the structures, but I think the bill has been enacted and proclaimed there. I would consider it as more progressive in this respect than what you have done here.

Mr. Chairman: Thank you, Mr. Borovoy. Thank you, Minister. With that we will move on. Thank you, again, for coming. It was very interesting to hear from you again.

Mr. Borovoy: Do I not get a few minutes to reply?

Mr. Chairman: I thought you did reply to the question.

Mr. Borovoy: I wondered if I could have a few moments to reply to the submissions.

Mr. Chairman: I would like to, but in the interests of time--we had a half hour; we have other witnesses ready. I am sorry. Next time, we will schedule you for half an hour and the minister for the same and I think we can get it all on the record. Thank you very much.

Mr. Borovoy: Let the record simply show I am prepared to respond to the things they say.

Mr. Chairman: Thank you very much again. Next we have Mr. Earl Levy, please.

Hon. Mr. McMurtry: He is president of the Criminal Lawyers Association.

Mr. Chairman: Welcome, Mr. Levy, and please make your presentation whenever you are ready.

CRIMINAL LAWYERS ASSOCIATION

Mr. Levy: Thank you, Mr. Chairman. I hope to get everyone back on the timetable.

It is essential for the proper maintenance of law and order that there be respect for the police who are such an integral part of the administration of justice. This is particularly so in such a racially mixed society as Toronto. Glaring examples of this simple truth can be seen in the larger United States cities where there are very high crime rates with concomitant loss of respect for the police and administration of justice.

In my view, our public complaints commission, which has been referred to in San Francisco as the noble experiment, can only lead to an increase in public respect for the administration of justice because of the impartial aspect of the investigation and the openness of the commission's findings. Some police, who may have otherwise acted improperly, will think twice, knowing their conduct may finally be dealt with by citizens rather than fellow policemen. Policemen will become more careful in the way they handle complaints and more people will come forward who might not have done so otherwise because they just did not have faith in police investigating themselves.

There appears to be no doubt that various segments of the public have accepted the commission's work. Other countries such as Britain, Australia, Ireland, Hong Kong, Jamaica, the Netherlands and a number of states of the United States have come forward to learn from the noble experiment. I note that during the past three years many of Mr. Linden's recommendations have been accepted, particularly the ones regarding videotaping and recording of confessions.

I understand a pilot project is going to be started shortly in district 44 in Scarborough. I understand the recommendations were accepted in the Morrish Road incident; namely that a civil suit be settled, an apology be given to the people involved and changes be made in crowd control procedures. In my respectful submission, the administration of justice has been well served by the public complaints commission.

However, it is an experiment and it is not a perfect system. I echo some of Mr. Borovoy's complaints. It is important the commission have the discretion to enter the scene earlier than the 30-day time limit period, a discretion to be exercised on reasonable grounds to prevent the relatively few incidents where there will be coverups or the appearance of coverups. The police normally will control the scene and the evidence and it may be important certain evidence be preserved. That is one area where the commission should be enabled to enter the scene earlier than now permitted.

Police officers should not be permitted to consult with each other when making their notes. Our courts seem to accept that police officers can consult with each other when making their notes. However, the police do not put two accused in a room and

say: "We want your statement. We will leave you here for 15 or 20 minutes. You two make up your statement and bring it out to us." What police officer or crown attorney would accept that?

I also agree with Mr. Borovoy about the burden of proof. It seems to me that in civil cases, where there is a loss of property or money concerned, for the person bringing the action the proof is on a balance of probabilities. There should be no difference in the present situation. There are no criminal sanctions here. No one's liberty is at stake and no criminal convictions are involved. In my respectful submission the burden of proof should not be beyond a reasonable doubt, but should be on the balance of probabilities.

Those are the reservations I wish to address. Coming back to the positive note I started with, it is our association's fervent hope that this noble experiment will be carried on with other forces throughout the province. It is too good to be only for Toronto.

10:50 a.m.

Mr. Philip: As to your comment about giving earlier access to Mr. Linden or whoever his successors might be, do you have a specific amendment you might recommend to clause 18(1)(c) of the bill?

Mr. Levy: I have never addressed my mind to the exact wording, but it seems to me it should revolve around a discretion; I am not saying it should be mandatory. There may even be instances where the police would like the commissioner to come in earlier. I can foresee that happening.

Mr. Linden: That is provided for in clause 18(1)(b).

Mr. Levy: It may well be that the commission will get a phone call from a citizen saying: "Listen, something has happened here. I think the bloody shirt is going to go missing. I think the gun in question is going to go missing or be changed." On reasonable and probable grounds, the commissioner should be able to exercise his discretion and enter upon the scene, for example, to preserve evidence.

Mr. Philip: My problem is that if we go in the direction you are asking, clause 18(1)(c) has to be amended. I am not quite sure how far you want to amend it.

Do you want to give the commissioner absolute and unfettered discretion to enter at any time or would you put certain restrictions on him? There are fairly severe restrictions there. It says he has to believe there has been "undue delay or other exceptional circumstances in the conduct of an investigation." What changes do you want?

Mr. Levy: I think it should be a discretionary matter. We have an appointed commissioner who has the faith of everybody who appointed him and we should be prepared to have faith in the exercise of his discretion.

Mr. Philip: It is at his complete discretion to enter at any time?

Mr. Levy: Yes.

Mr. Elston: My question to Mr. Levy is basically about dealing with the apparent coverup opportunities. That revolves around the discretion to get in at an early event. Have you seen or heard of in your capacity with the criminal bar a situation where that has occurred inside the last three years?

Mr. Levy: Personally?

Mr. Elston: Yes.

Mr. Levy: I have not been involved in allegations of coverup.

Mr. Elston: Normally, I suppose it would come to your section of the bar for discussion if there was.

Mr. Levy: Not necessarily.

Mr. Elston: The other thing I would like to know is with respect to the commissioner. I made these remarks on the second reading of the bill.

Basically, what we have is an informal situation, or at least in large measure the community looking to the commissioner to do a good job and understanding that he will. My concern is what we do if this commissioner is not with us at some point in the future.

You have mentioned one example of unfettered discretion for an individual with whom we have a great deal of sympathy and trust in terms of the public good. Are there any areas you might be concerned about if we did not have Sidney Linden as commissioner? Is there anything you would put in the statute to ensure that the three-year noble experiment could be legislated into existence rather than left to the good graces of the person who controls the office?

Mr. Levy: I am sorry?

Mr. Elston: You have said we will give the commissioner all the discretion he needs to get in at an opportune time. Is there anything you would enshrine in legislation as a result of what you see happening under this current experiment in the way the matter has been handled? It seems to me a lot of the success of this experiment is based upon the track record of the individual rather than on the legislation itself.

Mr. Levy: Yes.

Mr. Elston: Do you agree with that?

Mr. Levy: We all know Mr. Linden has done a very fine job. It is hoped that anybody else who is appointed will carry

qualifications that will lead him or her to do the same fine job. Whether the appointment is for one year or three years, I am not sure, but obviously if the powers that be are not happy with the commissioner appointed, changes can be made.

Mr. Elston: Okay, on to a second matter. How do you propose to deal with the question of consultation for police officers? You have raised that as a problem in dealing with an investigation, but is there something in this legislation that we can do that would prevent the consultation you are talking about?

Mr. Levy: I can foresee that even if the commission is called in almost at the first instance, they still may not get there before police officers consult. It seems it should be part of the investigative policy that the officers involved be separated immediately by the duty sergeant or whoever is in charge. When they are separated, they should immediately write statements as to what occurred.

Mr. Elston: Is this when a complaint is lodged, or after every incident? I do not understand how we are going to do that effectively. Presumably the complaint would have to come at some stage after the incident occurred. In fact, the people would almost have to beat the police back to the station to have that type of program implemented.

Mr. Levy: Yes, in some instances that would occur. As I indicated before, it seems police feel they can consult any time they wish, on making up their notebooks, and in my experience the courts confirm that. Maybe that aspect of it should start right with the police training. When police officers make up their notebooks, for any incident, they should be separated and not be able to consult.

Mr. Elston: It is not something we are apt to be able to address inside this legislation particularly, unless, as you suggested, we give the commissioner a discretion for an earlier opportunity of intervention.

Mr. Levy: Yes.

Mr. Elston: Thank you.

Mr. Chairman: Thank you, Mr. Elston.

Mr. Linden do you have a quick comment? If not, thank you very much, Mr. Levy.

Hon. Mr. McMurtry: I would like to thank Mr. Levy and the Criminal Lawyers Association for their interest and for coming here today. It was a very important deliberation and thank you, Mr. Levy, for being with us this morning.

For clarification for colleagues and friends in the media, I understand--correct me if I am wrong--that the term "noble experiment" comes from the director of the Berkeley review commission, which I understand is the oldest and most respected

civilian review commission in the United States. That was where you were referring to the quote from the California--

Mr. Levy: That is correct.

Hon. Mr. McMurtry: Thank you, Mr. Levy.

Mr. Chairman: Thank you again, Mr. Levy. We next have the Citizens' Independent Review of Police Activities. Would they please come up? I believe it is Mr. Wainberg.

CITIZENS' INDEPENDENT REVIEW OF POLICE ACTIVITIES

Mr. Wainberg: Do members of the committee have copies?

Mr. Chairman: Yes, the clerk is distributing them. Thank you very much. You may proceed at will.

Mr. Wainberg: Citizens' Independent Review of Police Activities was founded in 1981, the year Bill 68 came into force. We have two main purposes: one is to act as a lobby group for police reform and the second is to act as a support group for complainants against police. We operate a 24-hour phone line to receive complaints against police and to assist complainants in pursuing their complaints through the most appropriate channels.

CIRPA made a presentation to this committee in 1981 and I made a presentation on behalf of another group called the Coalition Against Bill 68 at the 1981 hearings. Several points I propose to raise today were also raised in 1981. Certainly the experience our organization has had with Bill 68 has vindicated our 1981 position.

11 a.m.

CIRPA has two main areas of concern about Bill 140: what is in the bill and what is not. I will address myself first to the provisions of the bill itself.

The act says complaints lodged by persons not "directly affected" by the alleged misconduct will not be dealt with under the act. It is not clear whether that would include eyewitnesses, and it is important that eyewitnesses to an incident of police misconduct have the right to lay a complaint. This is not just an academic point.

In a couple of cases we have been involved with the complaint has originated from a witness. In one of the Messacar cases, and Constable Messacar was referred to by Mr. Philip, in the more serious of the two cases involving Constable Messacar, the complaint originated with a witness coming to Citizens' Independent Review of Police Activities and saying she had seen this man assaulted on the street. It was because of her complaint to us that the process got under way.

I think it is important that if we are going to allow people who are offended by police misconduct to lay a complaint, that those complainants should include eyewitnesses. I would suggest

the restriction regarding persons "directly affected" be amended to refer to persons "directly affected or having personal knowledge of an incident."

"Misconduct" is now defined as conduct that would be an offence under the code of offences in the Police Act regulations. The Police Act regulations are attached to the brief, as a schedule. They are fairly comprehensive but, as Mr. Philip indicated earlier, there are some areas which are not covered by the code of offences under the Police Act. It does not deal with the sort of collective stonewalling situation we saw in the Morrish Road incident.

It also does not address the Messacar situation, where an officer is found civilly liable for false arrest, malicious prosecution, and that sort of thing. That point was dealt with by Mr. Philip and also by Mr. Borovoy. I think it is important, for the purpose of upholding respect for the administration of justice, that an officer who is found liable in a civil court be subject to some sort of disciplinary penalty. I think it is an outrage that Constable Messacar is still out on the street after twice being found liable for assaulting civilians.

The question of a reverse onus provision was dealt with by Mr. Philip, in response to Mr. Borovoy's presentation. I think it is important, if it is not dealt with by means of a reverse onus situation, that at least the commanding officer at a scene such as the Morrish Road incident, take some responsibility.

If the officers are going to go out of control as they did at that incident, and if they are going to stonewall and lie to protect each other, or pretend they did not see anything, then somebody should be on the hook. If it were a football team and the team were not operating properly, the coach or the captain would be responsible.

There should be some vicarious liability for the person who is in charge of that particular operation. If they cannot control their officers, then they should be subject to discipline under the statute.

That collective stonewalling problem has come up in one of the cases decided by the Police Complaints Board. It was a case called Footman. It is referred to in the schedule in my brief. There is a quotation from the decision of the police complaints board, regarding Footman and PC Evans and others. The board, before dealing with the charges, felt it was important to note that the board had serious concerns about the reliability of the evidence of several of the police witnesses who gave evidence in this hearing.

They go on to say as follows: "We will mention specific instances. Firstly, all of the officers who gave evidence about the events at the scene were unable to identify colleagues in cars at a distance. One cannot help but draw the conclusion that these officers were acting to protect themselves and their fellow officers."

This happens again and again, that the police in that sort of group misconduct situation will stonewall. The act really has to address itself to that. You cannot shove it under the carpet, because it keeps coming up again and again.

If the commanding officer were held responsible for that sort of collective stonewalling, I think there would be a significant amount of peer pressure, from that commanding officer, to have the officers who were responsible for the incident come forward and confess to their own misconduct.

This is an administrative matter. Section 19 of the act provides for an extension of the 30-day period for laying a complaint. This section deals with requests for a review by the commissioner.

Section 13, which covers the refusal of the chief of police to deal with a complaint that he deems to be "frivolous, vexatious or made in bad faith," also provides for a 30-day period, but does not provide for an extension. I assume that this was an oversight. I cannot see any reason for distinguishing between the general review provision and a decision under the frivolous and vexatious section.

The practical consequences are significant. In the case of a complaint that the police complaints bureau finds frivolous or vexatious, the decision not to deal with it may be made very early. It may be made almost immediately after the complaint is laid.

If the complainant is imprisoned during the 30-day period, it may be very difficult, or impossible, for him to ask for a review by the commissioner. In fact, if he is incarcerated, assuming he is notified by mail, he may not even know the decision until after his appeal period has gone out the window.

I would suggest, then, that section 13 be amended to conform to section 19, and that it allow an extension of the 30-day period by the commissioner in appropriate circumstances.

There were a couple of points I did not address in the brief but would now like to speak to. These deal with the role of the chief of police in administering the statute.

There was a change in the role of the public complaints commissioner, to make it clear that he could not adjudicate on a complaint. In other words, if the matter went before the police complaints board, or whatever they call it now, Mr. Linden, or his successor, could not be a member of that particular board. I assume that the reason for that was to separate the investigative functions from the adjudicative functions.

I think the same approach should be taken with the chief of police. The police themselves have a couple of adjudicative functions under the act--apart from the frivolous and vexatious section.

The chief of police, or his designate, has the power to

decide that no action is warranted on a complaint. I have heard the minister's comments on the reason for retaining police investigation. Obviously, the Citizens' Independent Review of Police Activities disagrees with having any police investigation in the process. However, if you are going to have a police investigation, then you should not have the police even making that initial decision not to take any action on a complaint.

After that initial police investigation is made, after they have made their final report, I cannot see any reason why Mr. Linden, or his successor, should not be the one who makes the decision whether or not to run with the ball, whether or not to take on the complaint.

It streamlines the bill administratively because it cuts out a step. It allows for a faster decision and has the very significant effect that a negative decision in the first instance is very discouraging to a complainant.

11:10 a.m.

In 1982, only three per cent of the people who were turned down at the initial stage asked for a review by the commissioner, so that 97 per cent of the people are being screened out or discouraged--or whatever the reason is that they are not pursuing their complaints--at that initial stage.

The chief of police, or his designate, should not be making even that initial decision. If the police are going to investigate--well, the government seems intent on that, but let us not have the chief of police adjudicating as well.

The other function--it is not exactly an adjudicative function, it is more a mediation function--is that the head of the police complaints bureau is entitled to attempt informal resolution of complaints. There seems to be no reason why the public complaints commissioner should not be acting as the mediator in that situation.

There is a certain amount of potential intimidation if a person who is complaining against the police appears, in the first instance, before a mediator who is a police officer. The appearance of fairness is just not there. So I would suggest that section 10 of the act be amended to permit the public complaints commissioner to do the attempted informal resolution of complaints.

Citizens' Independent Review of Police Activities also has concerns about what is not in the bill. Several of these points were raised by the earlier speakers and were raised by our organization in 1981.

Obviously, the public complaints commissioner is still not permitted to commence an immediate investigation of the complaint except upon the request of the chief of police or in exceptional circumstances dealing with the investigation of the complaint.

There was a recent case in which Mr. Linden was involved called Augur~~us~~^{us}2. This has become known as the Russian roulette

case, in which a complainant claimed that a police officer, in the course of his investigation, had shoved the barrel of his pistol down his throat in an attempt to get a confession. The man's name is Antonio Augur~~usa~~.

When Mr. Linden--or Mr. Singleton, his investigator--heard about this particular complaint the investigation was conducted like a real criminal investigation and, in my opinion, that particular investigation is the best thing the public complaints commissioner has ever done. I think it is a model for investigation.

Mr. Levy mentioned the problem of separating the officers before they had a chance to collaborate on their notes. That was done in this case. The investigator separated the officers, sealed off the police station and seized the evidence immediately. That is how the office should work.

The problem with that is Mr. Linden was dependent upon the consent of the chief of police in that situation. If he had not had that consent, he would not have had authorization to handle the complaint in that way. I am sure Mr. Linden will agree with that.

The legislation dealing with exceptional circumstances only allows Mr. Linden to get involved when the investigation bogs down for some reason, but he cannot intervene before the investigation commences without the consent of the chief of police. He should have that power because the chief of police may, in the future, not be as co-operative and it is important that that type of investigation be done.

There is no other way the evidence could have been obtained in that case. Of course, the evidence that was uncovered in that case was the saliva on the barrel of this officer's gun so that evidence may not have survived if Mr. Linden had not become involved.

The police investigators are not aggressive in their investigations. The person in charge of that police station could have done the same thing as Mr. Linden did, but he did not.

In the Walter Noble case, which was one of the first major cases dealt with under the statute, Mr. Linden's staff uncovered some forensic evidence. There was an allegation by the complainant that he had been kicked by the officer. Mr. Linden's staff, either on his direction or by themselves--I do not know--analysed the complainant's clothing and found shoe polish which was consistent with the shoe polish on the police officer's boots.

That type of testing is not done by the police investigators of the police complaints bureau. They will go through the motions, they will interview the witnesses, but they will not dig; they will not be aggressive in their investigations. The public complaints commissioner's office will, in appropriate circumstances, take that aggressive approach.

The police just do not do as good an investigation as Linden's office and I do not see any reason, except to make the police happy, why police investigation should be retained.

I think it is important, if this bill is going to be renewed with police investigation for another three years, that an analysis be done of the quality of police investigations, because I think if you look at the quality of the investigations done by the police as opposed to that of the investigations done by Mr. Linden and his staff, there is no contest.

Mr. Chairman: Mr. Wainberg, may I ask you to summarize? We have a number of questioners yet and I would like to get them on.

Mr. Wainberg: I will be just a couple of minutes.

Mr. Chairman: That was only a reminder.

Mr. Wainberg: There was a discussion--I think it was in response to Mr. Levy's presentation--about the wording of a provision that would permit the public complaints commissioner to intervene immediately. The wording I propose is set out in the brief. The public complaints commissioner should be able to commence an investigation as soon as he deems it fit to do so in the public interest.

The burden of proof was dealt with by the two previous speakers. Burden of proof is something that has come up in several of the cases decided by the police complaints commission. The commission will always refer to that. In several of the cases, if you read them, the commission is quite dissatisfied with the evidence of the police officers, but it is not satisfied beyond a reasonable doubt that misconduct has been found.

There is no reason that police officers should be protected by a higher standard of proof than other professionals. If I as a lawyer go before a disciplinary committee of the law society or before a convocation, the law society has only to prove its case against me on the balance of probabilities. That standard is applicable to doctors and to other professionals, and I do not see any reason, unless there are criminal consequences, why there should be a burden of proof that protects police officers more than other professional people.

The penalties imposed by the police complaints board have been extremely unsatisfactory; they have been ridiculously low. In the Walter Noble case, which I referred to earlier, Mr. Noble made a complaint that he was assaulted while in handcuffs in the police station, and this complaint was upheld by the police complaints board. The officer in question was suspended for two weeks without pay. This was a serious assault. Mr. Noble was injured; he had several bruises and cuts on various parts of his body.

In the schedule I refer to a couple of other cases, including the Footman case, in which Mr. Footman was held down by one officer and assaulted by another. In that case the officer involved was required to forfeit 12 days off.

Anderson and Kellock: This was the man who was hopping the fence to enter the Canadian National Exhibition. The board found that the officer repeatedly struck Mr. Anderson with a nightstick, despite the fact that Mr. Anderson had made no aggressive actions towards the police officer. The police complaints board ordered the officer to forfeit five days' pay.

These were all serious assaults. These officers should not be on the force if they cannot control their anger or whatever. It is not something that should be dealt with as lightly as with a two-week or one-week suspension. The board has the power to dismiss and it should be doing that.

There are two ways of dealing with this: either by having a minimum penalty or by at least allowing the board to impose monetary sanctions that are not employment related against the officers. Under the Ontario Human Rights Code a person who is found guilty of discrimination may be required to pay substantial sums of money to a complainant. Under the police complaints system that same power should be available to the police complaints commission. It should be able to order an officer to make restitution to a person who has been assaulted.

11:20 a.m.

Mr. Philip: I agree with much of what you have said. I think there is a major problem with the commissioner not being able to intervene before 30 days except with the consent of the police chief, and I really wonder--it is less in the case of the city of Toronto, although there could be a case where perhaps the police chief would be the subject of an investigation himself. In the case of other municipalities, where there are less co-operative police chiefs than we have here in the city of Toronto, I think this may well have proved to be a problem.

It seems to me you have identified a significant omission in your proposal that section 13 be amended. Does the Attorney General want to move the amendment, which undoubtedly will be passed, or would he like me to move the amendment tomorrow night?

Hon. Mr. McMurtry: We are prepared to make that amendment.

Mr. Philip: Thank you.

Mr. Chairman: Thank you, Mr. Philip. Does the Attorney General have any comments to make?

Hon. Mr. McMurtry: Very briefly, we will make this amendment and I would like to thank Mr. Wainberg for being here this morning.

Apart from the amendment, I would like to state that, in my view, an eyewitness is a person directly affected by alleged misconduct and--

Mr. Wainberg: Why not verify it?

Hon. Mr. McMurtry: There is a problem with your suggestion. It would include people outside the category of eyewitnesses.

At this time, having stated this for the public record, certainly with the interpretation Mr. Linden places upon it, we will consider an amendment. For your information, I wanted you to know this is our interpretation. If a court were to rule otherwise, there would be some responsibility on us to clarify it. We will consider a clarification of that.

Mr. Philip: Does that include the Canadian Civil Liberties Association? I recognize it is an impossible situation to allow Mrs. McGillicuddy, who reads the newspaper and decides to force an investigation on something that may have been done to a complete stranger, or indeed to a neighbour, to have access to information on that neighbour.

In the case of a group such as the Ontario Federation of Labour or the Canadian Civil Liberties Association, if they see a pattern of violation and request an investigation by Mr. Linden, I wonder if, in considering your amendment, it would be possible to draft it in such a way that those responsible bodies might be able to get an investigation going. At the same time, I think you are quite right to exclude some of the nuisance kinds of intervention into a person's personal privacy by outside curiosity seekers or well-meaning people who should not be intervening.

Hon. Mr. McMurtry: There is some internal discussion here on whether that could well be accomplished without a change. I think any organization with specific knowledge would be able to assist a person making a complaint.

Mr. Linden: There is a provision for an agent to complain on behalf of a complainant, for example, a lawyer. In some cases, an agency such as Mr. Philip refers to might come under that category.

Mr. Philip: That does not cover the problem where a reputable body sees a pattern of things happening; neither would it cover the situation where, say, a trade union recognizes there has been some injury done but where a union member, out of fear, out of cultural traditions or whatever, does not want to go ahead with a complaint.

I know why the minister put in that amendment and I can empathize with what he was trying to do. At the same time, I would not want reputable, well-established bodies, such as the OFL or the Canadian Civil Liberties Association, or the Citizens' Independent Review of Police Activities, or one of the other community-based bodies to be excluded by a court decision from getting an investigation going, particularly where they identify a systemic problem of some sort.

Hon. Mr. McMurtry: Your submissions are interesting and very relevant. I have some difficulty with the principle of forcing a complainant to go through a procedure against his will.

Mr. Linden: Mr. Wainberg has indicated it might be useful to have some analysis of police investigations. We have been engaged in doing that all the time since the project began. The whole object of the exercise was to ensure that the quality of police investigations would improve.

If you look at the way the act was structured in the first instance, there is a regulation requiring the police to do an investigation according to an investigative format. In other words, an investigation now must proceed according to the steps set out in the regulation. They must interview witnesses if necessary, must obtain medical records from the hospital if necessary, must take photographs if there are visible injuries and so on.

This requires the police to put that information in a written report and to make that written report available to the complainant, to the subject officer and to our office. The overall effect of opening it up to that extent has been that over the three-year period we have seen a significant improvement in the quality of police investigations.

Mr. Wainberg: The investigations still are not as good as the ones done by you. Have the police ever done anything as in the Augurusa case? Have they ever sealed the stations and separated the officers? They just do not do that.

Mr. Linden: I can say it is improving significantly and has improved over the last three years.

Mr. Chairman: The next witness was supposed to be Mr. R. Williams, president of the Canadian Jamaican Association. We contacted Mr. Williams this morning and he will not be coming. We will now move to Alderman David Reville from the city of Toronto.

ALDERMAN DAVID REVILLE

Alderman Reville: Mr. Chairman, do you have Alderman Layton down to speak as well?

Mr. Chairman: Yes.

Alderman Reville: He will not be able to join us today. I can make some remarks on his behalf. His position and mine are not identical, which probably bodes well for useful discussion among members of the same party.

Perhaps I can deal with Alderman Layton's position quickly. He remains concerned that in the contemplated legislation the police officers will continue to conduct the preliminary investigation. He is concerned the penalties are too light to be regarded as effective and he is concerned that the burden of proof is still the criminal burden of proof, rather than the civil burden of proof.

The other concern is one I share. Perhaps I could speak about it at a little more length. I am going to describe a personal encounter I have had for some months with the office of

the public complaints commissioner. You will be pleased to hear my view of how well it is working.

11:30 a.m.

If possible, I would like to see a clause enshrined in the legislation that allows the civilian complaints office to investigate policing in a general way as to how it may affect particular communities, allows the investigators to make general comments about the nature of policing rather than investigating specific complaints.

That seems to me to be useful in those cases where there has been a rash of complaints that may seem to have some kind of commonality about them. It would be very useful, not only to those charged with the management of the police but also to anyone else who gives services to that general area, to extrapolate from those general remarks some problems that we are having in the delivery of services of all kinds.

In October 1982 there was a public forum in my area of Toronto, which is ward 7. For those of you who are not familiar with how the city divides itself up, ward 7 contains several quite disparate neighbourhoods. One of them is Regent Park, which you will know to be the oldest and largest public housing project in Canada. Just to the north of Regent Park is what the real estate agents are pleased to call Cabbagetown but which the planners call the Don Vale and which is significantly more affluent.

In my area there are, in all, 9,000 units of social housing out of about 30,000 units, so a very large percentage of the constituency I represent is low-income people. A couple of those constituencies in particular have an impression that the policing they are receiving is somehow different from the policing that other people receive.

The public meeting I spoke of in October 1982 was a meeting to talk about policing in the Regent Park area, and it was attended by a large number of residents and representatives of a large number of agencies that deliver other kinds of services to the community. One of the concerns that was raised--and this was done in a very impressionistic way at the time--was that excessive force was used in contacts between the citizens and the police.

The excessive force that was described at the time ranged from abusive language to stories of police officers standing on people's toes while they were interviewing them to threats with the tonfa stick to actual rough-housing, which would normally be followed by a charge of assaulting a police officer.

In fact, mothers in Regent Park--and these would mainly be mothers who are from the Islands--expressed to me and to others a concern that a part of the rites of passage of a young man in Regent Park is to be charged with assaulting a police officer on his way through school and that at the end of his formal education he will have some kind of school-leaving certificate and several convictions for assaulting a police officer. It seems odd to me

that the police are such delicate and tender beings that so many of these charges of assaulting a police officer should be laid.

After the public meeting in October 1982 a group was formed in Regent Park called the Regent Park Committee Against Police Harassment. It perhaps was an unfortunate title for a committee because it seems to suggest that there is police harassment, and that is not a view that is shared by all the residents of Regent Park by any means.

The police were perhaps understandably unhappy about the formation of the committee. In fact, the police I work with on a daily basis, who are mainly the community relations officers, were quite hurt that a committee with a name such as that had been set up.

At the same time as this was going on, the death throes of the Pilot 51 project were occurring. That was an attempt to improve police-community relations, which was not a success.

There is no question in my mind that, however well intentioned that attempt was, it did not succeed and could not have succeeded, because the committee itself never found a way to get any community representation on it. Indeed, there were police officers of differing ranks who went to every meeting, and there were lots of people who were experts on race relations and community relations, but there were never any real community people on that committee. As hard as we tried to do that, we could not do it.

When the Regent Park Committee Against Police Harassment was formed, it seemed to be a hopeful step, because this was a way to get actual grass-roots discussions on policing to happen. It was a way to start getting input from residents of Regent Park, where there are almost 10,000 people, white and black--Canadian blacks, West Indian blacks, and now, increasingly, Orientals. It was a way to get them to discuss how they were being policed.

Indeed, many of the people have good relations with the police. A smaller but perhaps more vociferous number have what they consider to be absolutely appalling relations with the police.

Subsequent to the formation of the committee--and I will not go through the whole history of it--Alderman Campbell and I, and others, were able to persuade the Regent Park Committee Against Police Harassment to take these complaints through the public complaints process. In fact, that has happened.

Mr. Linden is going to be reporting shortly on the results of the investigation, in addition to which he has extrapolated from all these complaints some common features which I consider to be disturbing. In due course, he will be making some recommendations which will not only legitimize a police-community dialogue but will offer both the police and the community some guidelines on how to work out some of these difficult issues together.

I do not know at the moment what the outcome of the 17, 18,

or 19 individual investigations will be. My suspicion is that, in many of the cases, the evidence was impressionistic. In a court of law, the offences complained of would not be considered to be offences. There is, however, a strong feeling in Regent Park that the police are not their friends, and that the police use their power to intimidate people. Clearly, that is not helpful to the calm enjoyment of the neighbourhood.

It certainly is not helpful for a mother to be concerned that her kid is going to get a police record for virtually nothing. The most common occurrence is for a police officer to say "Hello" to a young black; the young black does not say "Hello" back. This is what is alleged to me, and I have not personally seen it. When there is no answer, there is an interrogation of the young person. At some point in the interrogation, the young person gets charged.

There are situations in which two or three guys are hanging around, perhaps in a doorway or perhaps outside, just hanging around. The policeman comes along, and immediately we have an incident which did not need to happen. There was no apprehended insurrection in this case. There was no immediate threat of bodily harm to anyone.

Perhaps, if we could talk to the zone commanders of 51 Division, we would learn that on that particular day somebody was worried about something happening, and the people on the beat were making sure that it did not. I do not know all those ins and outs, because I am not privy to the instructions that the zone commanders give their troops every morning or at every shift change.

11:40 a.m.

In addition, there are concerns frequently expressed in Regent Park about the way surveillance is carried out. Why is it, for instance, that police vehicles are on roads not available to anybody else? These are not public highways. These are, in some cases, playgrounds. That irritates people. If they are not allowed to drive through why should the police, when there does not appear to be any need? Again, there is no riot going on in the playground.

We have been working very hard with the staff inspector in 51 Division, Aidan Maher, and I am happy to tell you he is being extraordinarily co-operative. He has indicated an extreme willingness to discuss these problems. Some other police officers, including senior officials, have dismissed it all as kind of bad-mouthing and they want dates, times and places.

I have had to say to them that a lot of this stuff is impressionistic. However, I think it is very important to have a public complaints system that allows for capturing this kind of impressionism, if we are to achieve an improved approach to policing in which people will freely acknowledge those who have done wrong should be punished but those who have not should go on about their business--and I think that is the significant difference here.

Furthermore, let us not use the police to create offences where none would have occurred without their untimely and inappropriate intervention. Then it seems to me we will have a better police service and find increased co-operation between the citizenry and the police, which obviously makes everybody's job easier.

Basically, what I want to tell you is that, in spite of doubts I had initially, I have found the work being done by Mr. Linden and his staff has been positive and useful. I would very much like to see that continued. I am somewhat concerned that his work does not have legislative protection or fiat.

If the personnel were changed and we got people who were less committed to sorting out these problems, then we would be able to do less with the office. I would urge you to give very urgent consideration to making it possible, on the discretion of the commissioner of public complaints, to undertake a wider overview of a policing situation, rather than just looking at specific complaints. That is the major point I would want to make to you today.

Mr. Chairman: Thank you, Mr. Reville. Mr. Philip, you had a question.

Mr. Philip: Does the new bill not do what you are asking? That was one of the areas on which I was complimenting the minister.

Alderman Reville: Maybe it does. Good.

Mr. Philip: In fact it says, in subsection 21(2): "Where, as a result of any matter dealt with under this act, the commissioner is of the opinion that a practice or procedure or law affecting the resolution or prevention of public complaints should be altered or implemented, he shall report his opinion and recommendations."

My interpretation of that is it gives the commissioner the power to do what this particular one has already done, perhaps because of his excellent reputation in civil liberties issues, with the co-operation of the past chief of police. I was pleased to see that.

Alderman Reville: I am pleased to see that in the bill, too, and I am glad you told me that. Does it go on to contemplate a process by which his recommendations will be reviewed?

Mr. Philip: Yes, the recommendations are to the board of commissioners, the chief of police and the Metropolitan Toronto Police Association.

Mr. Linden: Then it goes on, in subsection 21(3).

Mr. Philip: Yes.

Mr. Linden: "Within 90 days" they have to pass it on.

Mr. Philip: They have to pass the comments to the Attorney General and the Solicitor General and I assume then it goes into the annual report of the commission.

Alderman Reville: One thing I hope will happen in the investigation you have been doing on the general issues is that there will be an opportunity for local police and community response to any recommendations that are made. I find that the board of commissioners, or a police commission, is somewhat remote in terms of an accessible forum. In fact, if we had the best of all possible worlds, the local division and the local community would be able to sort out many of their problems if there is some incentive for them to do that.

In the case of 51 Division currently, Aidan Maher is prepared to do that. We are some way from knowing whether the community group is prepared to do that. They do not trust the police and they are quite frank about that.

Hon. Mr. McMurtry: But I gather from what you have said that since Mr. Linden's involvement, as part of his outreach activities, there is now communication between this group and the police--

Alderman Reville: That is absolutely right.

Hon. Mr. McMurtry: --that did not exist before Mr. Linden's involvement.

Alderman Reville: That is right. In fact, that was made possible because they liked the cut of Linden's jib, basically, and he seemed to be a straightshooter--and his associate Ms. Kean--who took their concerns seriously and proceeded with what they considered a somewhat slow haste, but indeed did what they said they were going to do and kept asserting with all the conviction they could muster that they were indeed not the cops.

Mr. Chairman: Have you anything further, Mr. Philip?

Mr. Philip: I guess my concern is still whether--maybe Mr. Linden or the Attorney General can comment on this--someone such as yourself, or myself, or the president of a community group, who has a feeling-- There is a difference between having specific complaints where people come forward and having a feeling that there is a pattern going on--and whether this pattern is not restricted under the section where the chief of police can stop an investigation from continuing because the principals are not laying the complaint.

It would be my concern, that where legitimate community leaders, such as the alderman or a member of provincial parliament or the president of a ratepayers' association, feel there is a pattern, that they, the third party, be included as someone who could lay a complaint and have it investigated.

I know the Attorney General said he is looking into that problem. Your example is a good example of where the community has come forward and with the co-operation of a chief of police who

felt secure and the local superintendent or inspector who felt secure enough that did happen.

However, I wonder what happens--I will not single out Niagara--in some area other than Toronto, where you may have a less secure chief of police or a less secure commissioner? I wonder whether that would happen?

Alderman Reville It happened in this case because there were a number of excruciatingly persistent people. Alderman Campbell and I went to then Chief Ackroyd. We went to the district 5 commander, Don Meads. We went to Bob White, who at the time was staff inspector. We went to the staff sergeants in charge of public relations and community planning. Our concern at that stage of the developments was that the little group called the Regent Park Committee Against Police Harassment would indeed become harassed.

11:50 a.m.

There were a couple of incidents where the police burst in on meetings they were having, and it seemed unclear as to why they were there. They claimed they were looking for a culprit--you know, sort of a mythical culprit who had perhaps run in there. Their records went missing a couple of times, so the group itself was quite paranoid that their names were known to the police, and indeed they were.

The police said, "We know all these guys; we know what they are doing and we know who their leaders are." That sounded like hugger-mugger talk to me. I knew who they were. They lived in Regent Park. They were not fifth columnists; they were not the people's front; they were not this and they were not that. They were folks.

Some of them indeed worked at local community agencies like Dixon Hall. One of the big concerns we had was the huge pressure on Chief Ackroyd to not raise money for the United Way because one of the workers of an agency in the United Way was helping this group. Well, that is kind of goofy stuff. You have to go and talk to all the bosses to straighten that out and that is what we did. We spent a lot of time talking to the chief, so that he had some reason to believe this was all real stuff happening and not the fiction of some fairly crazed revolutionary.

Mr. Chairman: Can we have comments from you, Mr. Linden?

Mr. Linden: Yes, I would just like to thank Alderman Reville for the kind comments he has made about me and about our office, and I would like to turn them right around. Obviously we would not have been able to accomplish anything in Regent Park without the continuing support of both Alderman Reville and Alderman Joanne Campbell.

When we became involved in the Regent Park situation, it was just as Alderman Reville described. There was essentially an impasse, and the community was simply not communicating in any way, shape or form with the police force.

The police force on the other hand were taking what could be described as a classic position. They were saying that if nobody was coming forward with any complaints, then there was nothing they could do to help them. It looked as if it was going to deteriorate; the situation was going to get much worse before it improved.

Individual complaints have not been reported upon yet and our general report has not been released yet, but we have been discussing it with the principal people involved. If it does not do anything else, it has broken down that impasse. To a large extent now there is normalization of relations between the community and the police force.

There was a change of personnel which, as Alderman Reville says, was very helpful. The new unit commander in 51 Division has a totally different approach to these matters and I hope there is no recurrence of the situation that existed some time ago.

Concerning what Mr. Philip says, we have had no problem finding the authority to do what we did in that case. Somehow or other we found the authority in the old act to do what we did.

I think the object of these amendments in the amended act is to enshrine them in legislation so another commissioner, even if he had a different view, would at least have the authority to take a look at a general pattern and take action. Even in a third party situation, there is a requirement of the chief to report those to the commissioner.

In section 22--I think it is, or section 21--it is anticipated the patterns or the trends that would begin to develop would be apparent to the commissioner or to his office, and in that situation he would be authorized to take action. There was some criticism of us taking action in Regent Park because there was no clear legislative authority. If anything, I think these amendments are helpful. That is really all I can say.

Mr. Chairman: Thank you, Mr. Linden.

Minister, we will allow you the final word.

Hon. Mr. McMurtry: I do not think I have anything to add to what Mr. Linden has stated, other than to emphasize the importance of the informal interaction between people who have public responsibilities as well as any legislative mandate. No legislative mandate can by itself create this interaction, which is so fundamental to an accountable society and an accountable police department.

Obviously, the role of the local aldermen is of crucial importance in dealing with the police department, and I would indeed be shocked if I did not think there always was a response to concerns expressed by local elected representatives. Quite apart from legislation, that is fundamental to accountability in our society.

Mr. Philip: Before we adjourn, perhaps I might ask the

minister a fairly straightforward question. As he so kindly pointed out, I made a fairly detailed submission about the bill on second reading. My concern is whether we will have a fairly detailed response from him in committee of the whole House.

I recognize he is running for the office of Premier at the moment. However, the bill is likely to come up on Thursday evening. Will he, rather than the parliamentary assistant, be in the House? I do not think the parliamentary assistant will be in a position to answer some of those fairly detailed questions.

Hon. Mr. McMurtry: I will be in the House.

Mr. Philip: Good; then may I wish you luck and I hope you become Premier.

Mr. Chairman: I hope that is not the kiss of death.

Mr. Philip: By far the best candidate.

Mr. Chairman: Thank you, Alderman Reville, for your comments and for expressing Alderman Jack Layton's concerns.

Mr. Linden, thank you and your staff for coming. I thank the minister and his staff for being here, and I thank the committee members for being here.

This completes the public presentations. Shall the bill be reported to the House without amendments?

Bill ordered to be reported.

The committee adjourned at 11:57 a.m.

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